

COPYRIGHT RESERVED

NOTE: Copyright in this transcript is reserved to the Crown. The reproduction, except under authority from the Crown, of the contents of this transcript for any purpose other than the conduct of these proceedings is prohibited.

THE SUPREME COURT
OF NEW SOUTH WALES
CRIMINAL DIVISION

PI:JA:MC 4

MATHEWS J

And a jury of Twelve.

70162/90 - REGINA -v- IAN STUART JONESWOLLONGONG: SECOND DAY: TUESDAY 18 AUGUST 1992.IN THE ABSENCE OF THE JURY:

GREENWOOD: Your Honour, I will shortly be asking that you discharge this jury and adjourn the trial before a fresh to be sworn on the basis that I am forced into a position where I must seek your leave to withdraw.

The circumstances concerning that development have substantially been discussed with your Honour in chambers. However, it is appropriate for me to put the matter on the record.

Yesterday morning before the trial commenced I sought to officially bring to your Honour's attention and to the attention of the Crown Prosecutor in your chambers - the Crown, of course, being present - a matter that I felt I should disclose, namely, that in June of 1991 I had cause to have a conversation, and not at my instigation but at the instigation of the person concerned, with a person who is a Crown witness - a very material Crown witness in this trial.

The circumstances of that were such that I took the view, after giving the matter some anxious consideration, that I was not compromised in my position to continue to act for the accused.

As that incident will probably be a matter of evidence before you at a later time, it would not be proper for me to say anything more about that incident, except that rightly or wrongly I formed that judgment that I was not impeded in continuing to act in this matter.

However, at approximately two o'clock, perhaps a few minutes before, yesterday afternoon. My learned friend supplied me with a statement from a witness Mark Phillip Locke dated 11 June 1991. That statement purportedly related to events of Friday, 7 June 1991, which was the date on which I had certain dealings with that material witness. The contents of that statement having been disclosed to me changed my confident view that I was able to continue to act for Mr Jones.

However, in the interests of utilising valuable court time, it was decided that the appropriate course would be to

contemplate actually calling on Locke quickly, much sooner than he would otherwise have been called, to hear what he would have to say in evidence-in-chief and steps were taken to procure him as the first witness this morning.

Your Honour and I have been informed in chambers, however, that that now does not seem to be a course which would save any court time, or would assist in any attempt by me to retain the brief, if I could just put it that way.

In those circumstances, it is my view that there is no point in proceeding to call that witness, having regard to what has been told to me by the learned Crown following a lengthy and thorough conference that he has had with that witness this morning.

As I have indicated, your Honour, it was at approximately two o'clock yesterday when the contents of the statement of 11 June 1991 were brought to my attention that I began to formulate a contrary view to that which I had hitherto taken, namely, the view that I was able to continue properly to act.

I think it is proper to record just a few other matters that have occurred.

The statement itself, first disclosed yesterday, is, as I have said, dated 11 June 1991. On 17 July 1992, my instructing solicitor's clerk, who is present in court, wrote to the solicitor for the Director of Prosecutions and inter alia requested: "Would you also provide to me at your earliest convenience a list of all witnesses' statements (including dates made where multiple statements)." And also seeking access to physical exhibits and so on.

By way of reply of 23 July 1992 - and that, of course, was substantially three weeks before this trial was set down to commence - this occurs: "I have spoken to the officer-in-charge of the matter, Det Plotecki and he has informed me the only witnesses he recalls who have made more than one statement are Mr Locke (statements 13/9/89 and 28/5/90)." So there is not imputed in that correspondence any reference to any possibility of the statement of 11 June 1991 and that is signed by Anna Ilardo who is the instructor for my learned friend at the Bar table, written under the letterhead of the DPP New South Wales. Those documents are on file and indicate that for one reason or another that it is the delay in disclosing the statement which has really caused the problem.

I want to place on record - the Crown made it clear - that it was not until the course of the morning yesterday after I had raised the matter outlined in chambers to your Honour that he, himself, was supplied by his solicitor with the copy of the statement. I think it is only correct that those facts be placed on the record because they do outline the series of events which have contributed to what is now a most unfortunate application for me to make; namely that I be permitted to withdraw and this jury be discharged without returning a verdict.

Every effort is being made at my chambers to make senior counsel available to take over this matter. It is a very serious matter, of course, and we are organising to nominate to my instructing counsel the counsel who would be taking the matter over for trial, hopefully to commence next Monday before your Honour here. This matter has been hanging over the accused's head for a considerable period of time and all the practical arrangements have been made for your Honour to try the matter here.

HER HONOUR: And witnesses, etc. The main thing is that it is a very old matter which just must be heard.

GREENWOOD: It was allegedly committed on 5 May 1989.

HER HONOUR: And the committal was?

GREENWOOD: Within a reasonable time.

HER HONOUR: I think in 1990. So, it is well over two years since the committal and that is much longer than should ever happen.

GREENWOOD: Yes. I ask your Honour for leave to withdraw.

HER HONOUR: Clearly it is a situation in which you must be permitted to withdraw. Mr Greenwood, in a sense it is a pity that the trial cannot proceed but I understand your position.

GREENWOOD: One further matter should be placed on the record: I did not want to make any comment about the statement of 11 June 1991 but I must for completeness say that it is apparent that person referred to in par 8 of it is almost certainly - - paragraph 8 just describes a person without getting personal - but that is the position.

HER HONOUR: What do you say about all of this Mr Crown?

CROWN PROSECUTOR: It is a series of unfortunate incidents. My instructing solicitor is one of a number of people who have had some dealings with this particular matter and she came into it fairly late and I am one of a number of Crown Prosecutors who has been involved in this matter and my learned friend informed me that, I think, this is the third time that we have tried to get this trial going. Unfortunately because of the way the papers are organised within the office there was one group and another group of papers and the papers my instructing solicitor had gone to prior to preparing the letter did not contain the statement of 11 June and it was only after my learned friend and I and your Honour had spoken yesterday that I spoke to Det Plotecki and he showed to me the original of that statement and it came to light - a copy of the statement was in fact in the solicitor's papers and just was not in my brief and I have been through my brief carefully with my learned friend's instructing solicitor, I think, on Friday of last week. Again I went through every statement to make sure she had a copy of everything and I had and, indeed, we copied out some she did not have and the statement simply was not with my brief and that is how it occurred.

If events were better organised in the administration then these things would not occur.

HER HONOUR: Let us hope that this provides something of a lesson which might lead to greater efficiency because it is abundantly clear if that statement had been made available to the defence beforehand it would have been perfectly obvious to Mr Greenwood at that stage that he could not continue in the case and steps would have been able to be taken so that the trial could have started yesterday without him and without this.

CROWN PROSECUTOR: It was obvious the material in the statement was material the prosecution would have sought to adduce in its case.

HER HONOUR: Clearly, it is very relevant material.

CROWN PROSECUTOR: My submission is obviously that the jury has to be discharged.

HER HONOUR: I am afraid there is no choice. It is a good thing at least we will be able to start again next Monday so it is a week's delay but it could have been a lot worse.

Now, what do I tell the jury? I am all in favour of being open and honest with juries at times like this but I clearly cannot go into any specifics but I think I should say that a situation has arisen which has meant that through no fault of his own Mr Greenwood is forced to withdraw from the case so it simply cannot continue.

GREENWOOD: Having regard to the size of the community here I would ask that if you say something along those lines that you add - and it must be stressed - that it is through no fault of the accused.

HER HONOUR: Certainly, you are quite right. I think I should not put it in any more precise terms than that but that is being truthful.

IN THE PRESENCE OF THE JURY:

HER HONOUR: Members of the jury, first of all I apologise again for the lateness in bringing you in and I am afraid I have some bad news: I said to you yesterday that one never knows from one moment to the next what is going to happen in situations such as this but what has happened at this stage - and indeed it is the reason why you are late being called in - because we have been discussing this matter in court and that is that a situation has arisen and I think it is inappropriate to discuss the details of it. The situation has arisen in which through no fault of his own - and I stress also through no fault at all of his client Mr Jones - Mr Greenwood is forced to withdraw from this trial. It is, in effect, a conflict situation which was not anticipated until now but the trial simply cannot proceed and accordingly it will be necessary to arrange a new counsel for Mr Jones. Hopefully, that will be done very shortly and a new trial will be able to commence shortly but I am afraid it would then have to be a new trial and it would be inappropriate in the circumstances

for it to be a continuation of this trial. That is the case really.

GREENWOOD: Yes.

HER HONOUR: So, members of the jury, I really have no choice in the circumstances but to discharge you and to release you under the jury summons. Fortunately it has happened early in the trial and so you have not been put to a great deal of inconvenience.

I think I should say this to you: it is an unusual situation. Do not think that this is the sort of thing which crops up regularly, it is obviously a waste of your time, court time, etc. and reveals a degree of malfunctioning in the system. It does not often happen but unfortunately it has happened on this occasion. I repeat and I stress it is through no fault whatsoever of Mr Jones or Mr Greenwood. I have no choice I am afraid but to discharge you from any further attendance in relation to this trial. Thank you very much for coming and for being prepared to withstand what was facing up to being quite a lengthy trial and not an easy one. You are now discharged and free to go your separate way. Thank you very much indeed and I am sorry it has been this way.

JURY DISCHARGED:

GREENWOOD: There are a couple of procedural matters. There are two subpoenas, one returnable Wednesday, 12 and one returnable Wednesday, 19. They are both to the Commissioner of Police who is using Det Plotecki as his agent.

The one of Wednesday, 12 has been partially answered but I am informed that there are matters which have to be argued, there are questions of privilege of certain materials.

For practical reasons, we would ask that the hearing of any claims of privilege in respect of those subpoenas be listed before you, say, on Friday morning.

HER HONOUR: What do you say about it, Mr Crown - are you involved in it?

CROWN PROSECUTOR: No, your Honour. The Commissioner will apparently have a solicitor here - will have some representative here on his behalf. Apparently Friday will be okay. All they wanted was apparently some notice.

HER HONOUR: So Friday is adequate notice?

CROWN PROSECUTOR: Yes.

HER HONOUR: It certainly is appropriate that we deal with any matters like this, take advantage of any time that is available. How long do you think it will take?

GREENWOOD: A fair bit of documentation, take upwards of an hour. Two subpoenas.

HER HONOUR: What about the one returnable tomorrow?

CROWN PROSECUTOR: That should go over to Friday as well.

GREENWOOD: Defer compliance with the subpoena by your order until Friday at ten o'clock and list the hearing of any objections to the subpoena of Wednesday, 12 at the same time.

HER HONOUR: I make those orders. What about bail?

CROWN PROSECUTOR: I would oppose bail being continued.

HER HONOUR: On what ground?

CROWN PROSECUTOR: I understand on a matter that I was informed about this morning, the accused has not come directly from the railway station to the court and there are certain allegations about his conduct towards a witness - it is already indicated in one statement - -

HER HONOUR: That is the statement of June 1991?

CROWN PROSECUTOR: Yes.

HER HONOUR: You have had that for a long time one way or another. Are there any other allegations?

CROWN PROSECUTOR: Yes, your Honour. I spoke to the witness Locke this morning. He informed me - -

HER HONOUR: Do you have a statement from him?

CROWN PROSECUTOR: No, a statement is being prepared. I don't know whether it is being prepared immediately I took notes and my instructing solicitor has taken notes - -

HER HONOUR: I would rather it be done by way of statement rather than by statement from you in court.

I can't see any members of the media here at the moment but it would be most unfortunate at this stage if anything along those lines were to get into the media with a trial commencing next week. So I would rather it be by way of presentation of statement.

CROWN PROSECUTOR: That statement may have been completed, your Honour. I know that Det Plotecki was working towards taking a statement but I am not sure - -

HER HONOUR: I think it should stand down until the statement is completed. It will be done by way of statement. As I said, there is clearly no member of the press here at the moment but it would be disastrous if something prejudicial came out in the press with the matter going on on Monday.

I think whilst this matter is pending, Mr Jones must remain within the court room but he can physically leave the dock because, as I understand it, there is a bail application and somebody will have to be brought up from below.

SHORT ADJOURNMENT:

UPON RESUMPTION:

HER HONOUR: Is that a member of the press here?

MEMBER OF THE PRESS: Yes your Honour.

HER HONOUR: I can't give any directions but it would be a good idea of what has happened today is not published because there is to be another trial on Monday and we do not want anything to affect the outcome.

MEMBER OF THE PRESS: May I stay and take notes.

HER HONOUR: Sure.

Mr Crown you are seeking that bail is not further allowed?

CROWN PROSECUTOR: Yes your Honour.

HER HONOUR: You are relying on this plus the earlier statement?

CROWN PROSECUTOR: Yes.

HER HONOUR: What do you want to do about that, Mr Greenwood?

GREENWOOD: My instructions are to ask your Honour to continue to afford the accused bail.

HER HONOUR: I was told by the sheriff's officers that there were a couple of problems about overnight bail which is a real worry. I think some of this is rectifiable and no doubt not his fault. I know yesterday afternoon he was accompanied but I understand that was to get to the taxi rank and it was on the basis that he had asked whether he could ring a taxi from the police station and nobody gave him a positive answer.

Assuming bail were to continue I would suggest to them that they do allow the accused to telephone from there so that the danger would be overcome. There is a more important problem, he was apparently seen by a juror this morning in the Mall - that is a real worry.

GREENWOOD: What happened was simply this: we spoke to the accused yesterday afternoon after court and he said he had enough money to get a taxi to the station and get back to Sydney and then back here and get a taxi to court this morning. He was offered by my instructing solicitor the loan of a few dollars to allow him to do that if he were short but, yes, he was a bit too proud to accept that. He did not have enough money to get a taxi this morning from the railway station.

He has, of course, lodged a thousand dollars bail of his own money but apart from that he is really living on the "smell of an oil rag." Your Honour, that problem can be rectified now that we more properly understand his position.

HER HONOUR: What about this more recent statement?

GREENWOOD: Your Honour, allegations of course are one thing and they have yet to be tested and I would ask your Honour to take into account that no more than allegations have been made.

HER HONOUR: But they are very serious allegations and if accepted would indicate a breach of the bail conditions in a most fundamental way.

GREENWOOD: Yes. There is now the reality of the situation in which his trial has commenced and I am sure that if your Honour were to give him a very strong direction from the bench that he would realise the seriousness of his position. However, there are matters that do come into account and one is that he is on a methadone programme and the other is that he is on Largactil - a drug for calming the system.

HER HONOUR: I suppose the other thing I am conscious of is if the case is going to proceed in an orderly manner then a new counsel brought in for preparation of a trial for next Monday would be severely hampered by his being in custody.

GREENWOOD: That was my final point. That would, in my experience, present enormous difficulties and we are all conscious of the desirability of getting that up and running. The case is not one which would be impossible to work out between now and Monday but everything has to go right.

HER HONOUR: Who is going to be in it - do you know at this stage?

GREENWOOD: Yes, Mr Finane of Queen's Counsel has accepted the brief. That is going to need all things to move smoothly in order to be worked out properly and we do have the weekend intervening. For him to be in custody is going to cause counsel considerable difficulty and there are other practical difficulties: the accused's possessions are in a small rooming house in Sydney and we are concerned about those but principally Mr Jones, now having been aware that even allegations that he has approached people could very well see him deprived of his liberty, I would suggest would be a sufficient deterrent to him to ensure that such an incident, if it happened at all, is not repeated or not instigated. Obviously, if your Honour receives further complaints then his position would be clear.

Mr Jones has presented throughout the period leading up to his trial as someone who is obviously showing apprehension about the prospect. He is not a person of benign disposition but in my judgment if your Honour were to speak to him in plain terms I think that you would mitigate the risk of any problems that may arise. If I am right in that then, of course, the benefits are that he is not impeded in giving instructions to his new counsel and his medical and associated problems can be continued to be treated properly. Of course he can have through the course of facing a trial of murder the out of hours comfort and solace of the friends he has made through the church group which, in ordinary human terms, is important in order to keep his own thoughts clear and be in a position to properly defend himself by giving proper instructions.

The difficulties of his being in custody in the circumstances here are enormous and putting the whole thing together I would ask your Honour to issue the sternest possible warnings to him to give him a chance to be able to do that.

HER HONOUR: Mr Crown, what do you say about it? My problem is that most of this is pretty old stuff. That is the real problem.

CROWN PROSECUTOR: Yes but there is a pattern of conduct.

HER HONOUR: If one accepts the allegations there certainly is and that is very worrying indeed.

CROWN PROSECUTOR: Although it is not happening every week or every month, it has happened according to this man Locke on three occasions since about the end of 1990, the beginning of 1991. It appears that the accused knows the movements of Mr Locke to a certain extent.

HER HONOUR: To a certain extent.

CROWN PROSECUTOR: He knows also, it appears, the importance of Locke's evidence. If he nullifies Mr Locke then the Crown case against him is very much diminished. It seems there is a concentration on this man Locke, in my submission, so how do we protect Mr Locke from further attacks on him or attempts to approach him?

Abadee J made an order that he not communicate or make contact directly or indirectly with Mr Locke, amongst other people.

HER HONOUR: He clearly was in breach of that. When was that order made?

CROWN PROSECUTOR: That order was made, according to the material here, on 21 January 1991.

HER HONOUR: Clearly he was in breach of the matter, wasn't he?

GREENWOOD: Those facts are disputed, as to who approached who.

HER HONOUR: But nevertheless they were in each other's company. There is no doubt they were in each other's company and therefore there was a breach.

GREENWOOD: I thought the order was he was not permitted to approach.

HER HONOUR: Well, have any contact with.

GREENWOOD: If a view of the facts of that incident were taken consistent with a very material Crown witness saying to an accused certain things in his favour, then perhaps that would enormously mitigate against that contact in terms of whether it was a serious breach. If you take a certain view of those facts it would be a temptation of enormous proportion to be in breach of that bail condition in that sense. I do not want to say any more.

HER HONOUR: I understand what you are saying. I really just do not know what to do. If all this had come off as recent stuff I would have no reservations whatsoever about refusing bail, because they are very serious matters indeed. But the fact is they are old matters, by and large. Two out of three are well over a year old.

CROWN PROSECUTOR: The accused, if he is to have his liberty, even after he leaves here there is still that danger of contact between himself and Locke so he has to be in some way restrained in some way.

HER HONOUR: Have you any suggestions?

CROWN PROSECUTOR: According to this note here he was supposed to reside at [REDACTED], Darlington. I do not know if he still does. He was not to move unless he notified the officer-in-charge of Redern police of any change of address. That causes problems because it is near where Locke conducts his activities and where he sees the doctor.

HER HONOUR: Locke goes very regularly for methadone, does he?

CROWN PROSECUTOR: Yes, he works in the area doing what he does. If your Honour is to give him liberty then he is not to be go into that area, as I understand [REDACTED] is on the southern side of Oxford Street. Until this trial is completed perhaps he could confine his movements to the southern side of Oxford Street and keep away from [REDACTED].

HER HONOUR: But so is the doctor's surgery.

CROWN PROSECUTOR: That is on the northern side.

HER HONOUR: You are quite right.

CROWN PROSECUTOR: If he could keep well away from the northern side of Oxford Street.

HER HONOUR: Where is he living now?

(Mr Greenwood spoke with the accused.)

CROWN PROSECUTOR: I can hear what is being said. It sounds like the same place. They both get their methadone from the same place.

GREENWOOD: The accommodation problem is solved. He can stay with his friend from the church at Waterloo.

HER HONOUR: What about his methadone - can his friend pick it up for him, or is that not permitted with methadone?

GREENWOOD: He has been going to this particular clinic for two and a half years. I honestly did not think Locke was going there too.

HER HONOUR: Well, he does now.

GREENWOOD: It is possible that he could arrange with his doctor to have it transferred to another clinic, away from that area.

HER HONOUR: He is not to approach the Kings Cross/Darlinghurst/East Sydney area at all. That is the price of his bail. He can transfer it to another clinic, can he?

GREENWOOD: As I understand it, the doctor can make the arrangements. I am quite sure we can provide a bit of assistance so we can fast track that.

HER HONOUR: What is the address in Waterloo?

GREENWOOD: [REDACTED],
Waterloo.

HER HONOUR: Well, it is very good of his friend. His friend is here, is he? Would you mind coming forward and telling us a bit about it, because a bit of responsibility for this falls on you. Do you mind giving evidence about it?

SCRIMGEOUR: No.

JOHN SCRIMGEOUR
Sworn to answer:

HER HONOUR: Q. Would you just tell us your full name?
A. John Scrimgeour.

Q. You live at?
A. I have an apartment on the [REDACTED].

Q. Waterloo?
A. Waterloo.

Q. And you are prepared to have Mr Jones stay with you there, are you?
A. Till the trial is over.

Q. Until the trial is over?
A. Yes.

Q. You have enough room for him to stay?
A. I have a room big enough for both of us.

Q. You have been accompanying him each day down here?
A. Yes.

Q. Will you continue to be doing that?
A. Yes.

Q. Can you accept the responsibility of ensuring that he does not go to the Darlinghurst/Kings Cross area?
A. Yes but how is he going to pick up his stuff?

Q. Assuming that it can be organised for another clinic to provide his methadone?

A. Yes. Well, I am happy if he is happy.

GREENWOOD: I think the phrase "pick up his stuff" referred to Mr Jones belongings at his Darlinghurst premises.

WITNESS: Well, there wouldn't be much. I could pick it up.

HER HONOUR: Q. I think that would be a good idea. You are prepared to take it upon yourself to make sure that he does not go into the Kings Cross/Darlinghurst/East Sydney area, are you?

A. Yes.

Q. Assuming that arrangements can be made for his medication to be collected elsewhere?

A. Yes.

Q. And you, yourself, could collect his property?

A. His possessions, yes.

HER HONOUR: Well that is very good of you. Do either of you want to ask any questions?

CROWN PROSECUTOR: No your Honour.

GREENWOOD: No, your Honour.

HER HONOUR: Q. You understand it is quite a responsibility?

A. Yes.

Q. And you are prepared to do that?

A. Yes.

WITNESS RETIRED

HER HONOUR: I think that that provides the answer and so I allow bail to continue but I vary - where is he supposed to be reporting?

GREENWOOD: Surry Hills police. But apparently Surry Hills is too close for comfort and he would rather Redfern police station.

HER HONOUR: Subject to the deletion of the present residential and reporting conditions and the addition of the condition which I will mention in a moment, in lieu of the present residential condition he is to reside and continue to reside at [REDACTED], Waterloo.

In lieu of the present reporting condition, he is to report daily to the officer-in-charge of the Redfern police station except upon such days as his attendance is required at court.

The following additional condition is to be added: that until the completion of his trial he is not to enter the Kings Cross/East Sydney/Darlinghurst areas at all.

Now Mr Jones, you are buying your liberty by agreeing to those conditions. I assume you do agree to them?

ACCUSED: I do, your Honour.

HER HONOUR: And if there is any whiff of a breach of any of those conditions, then you will have forfeited your liberty. There is no doubt about it that your bail will then be refused.

We will need him here for Friday, won't we?

GREENWOOD: Yes.

HER HONOUR: I formally stand the trial over until next Monday, 24 August 1992 but I adjourn the hearing of the matters related to this subpoenas to Friday, 21 August 1992.

oOo