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TRANSCRIPT OF PROCEEDINGS

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

MILES CJ

SCC No 104 of 1999

THE QUEEN

and

COLIN GEORGE DUNSTAN

CANBERRA

9.38 AM, MONDAY, 10 MAY 1999

MR K. HEMPENSTALL: For the Crown in that matter, if your Honour pleases.

HIS HONOUR: Yes, Mr Hempenstall.

THE ACCUSED: Your Honour, I appear for myself.

5 HIS HONOUR: Yes, Mr Dunstan. Is this an application by Mr Dunstan?

THE ACCUSED: Yes, your Honour, I understand that it is necessary to have a directions hearing such as today to seek a trial date for the charges against me to be set down for hearing.

10 HIS HONOUR: Well, the normal procedure is that the matter goes into a list of cases that are coming up for hearing. The next occasion on which that will happen is the first Monday in June, is it not?

MR HEMPENSTALL: The first Monday in June, your Honour.

15 HIS HONOUR: That is normally what happens, Mr Dunstan. Because there are a number of matters waiting hearing we have to sought out the priorities and the various people who are concerned appear then, usually through their legal representatives.

20 THE ACCUSED: I am in the unfortunate position of not being able to afford legal representation at this stage, your Honour, so I will need to appear myself on that occasion. If it please the court, the matter of setting a trial date then is probably best, as you said, left to the 1 June.

HIS HONOUR: Well, it is not as easy as that. If you do not have legal representation then you should appear personally. Are you in custody?

25 THE ACCUSED: Yes, your Honour.

HIS HONOUR: Well, that provides a difficulty. Is there anything else that needs to be attended to?

30 THE ACCUSED: There are some matters that might be able to be resolved by a direction of the court on this occasion, just to avoid the possible delays or problems with preparation for trial in the future. I apologise for bringing these to the court's attention at a late stage.

HIS HONOUR: Yes, all right. Well, they may not be late.

THE ACCUSED: I would just like to say that it involved a small error in one of the charges under section 19 of the Crimes Act, that the court may be able to redress by ordering an amendment to that charge, which I would have no objection to the court making.

5 HIS HONOUR: Well, the procedure is that the charges that were laid before the magistrate - and I presume you have been committed for trial on them, have you?

10 THE ACCUSED: Yes. The problem arises, your Honour, that the material evidence in relation to the detailing of the charges was only put before me literally, on the table, at the commencement of the committal hearing and so I was unable to inform the magistrate of the error in one of the charges, that should have been amended at that stage.

15 HIS HONOUR: Well, I was just going to say, there is the charges that were before the magistrate and on which you have been committed for trial, are not necessarily the charges on which you would stand trial. The Director of Public Prosecutions has to make decisions about a document called "the indictment" and that is the document that contains the charges that are proceeded with in this court, it founds the jurisdiction of this court. In fact, I have no power to do anything really, unless there is an indictment, but I can make or give directions of an interlocutory nature and there are some independent decisions that I can make that could result in orders, regardless of an indictment. So I do not think you need to worry too much about an error in the charges at this stage. You might inform the prosecution or you could state it now so that we all know. What is it?

20 THE ACCUSED: Yes, if I might state it for the record, your Honour. I believe that the number of charges, 28 charges under section 19 of the Crimes Act is the correct number of charges. The problem arises with a charge in relation to Robyn Mary Orr. In the evidence book, book number 3, photo 23, there is a photograph of three envelopes that had been prepared and not use and one of those is addressed to R. Orr of 7 Sampson Close, Melba.

HIS HONOUR: How do you spell Orr, O-r-r?

THE ACCUSED: O-r-r.

35 HIS HONOUR: Yes, thank you.

THE ACCUSED: And so I believe quite firmly that the charge in relation - under section 19 for Robyn Orr is incorrectly identified.

HIS HONOUR: Sorry, is it - well, you simply say that photo is incorrectly identified?

5 THE ACCUSED: Sorry, no. The photograph shows that there is an unused envelope that was not used for a package addressed to Robyn Orr and so the charge under section 19 in relation to an action taken against - an allegation in relation to action taken as Robyn Orr is incorrect. The charge identifies the wrong addressee.

HIS HONOUR: All right. Well, the Director of Public Prosecutions can note what is said. Yes.

10 THE ACCUSED: And just to assist in identifying the correct addressee for the 28 charge, in substitution of Robyn Orr, also on that same photograph, photograph 23 in book 3 it identifies two \$2 stamps and
15 three 30 cent stamps. My understanding is that there were 24 \$2 stamps originally, 22 of which were used for parcels posted in Canberra and only 21 of the 30 cent stamps were used. There was one parcel that was particularly identified uniquely by having only a single stamp, as opposed to two stamps, and that parcel appears in book 1 in photo 56, 57, 43 and 44.

20 It is probably a little difficult to see there, but this is the parcel that is the missing parcel and that parcel was in fact addressed to Anthony Crewes, spelt C-r-e-w-e-s. I cannot make out the street number, but it is Fergus Road, Queanbeyan, New South Wales. So that charge in relation to Robyn Orr, it should be replaced by a charge in relation to Anthony Crewes.

25 HIS HONOUR: Yes.

THE ACCUSED: That takes care in relation to the section 19 charges, your Honour, but it does lead to one further anomaly and that is, in book 1 of the photographs at the Fyshwick Mail Centre, photo 29, there is a photo of 21 parcels, each of which bear two postage stamps; a \$2
30 stamp and a 30 cent stamp. And as I previously mentioned, photograph 56, 57, 43 and 44 show a 22nd package addressed to Mr Crewes at Queanbeyan and the problem that gives rise to, your Honour, is that at the time the police photographed all 22 packages at the Fyshwick Mail Centre, none of them had exploded, which has a bearing I believe on the
35 charge that relates to an incident of arson.

Just by way of further clarification, I believe that on the previous occasion in this court Mr Refshauge for the Crown mentioned that a parcel had been delivered in Sydney the previous day, on Tuesday,

1 December and when Gallop J asked what happened to that parcel, I believe Mr Refshauge replied that the recipient, not recognising the name of the return to sender, simply returned the package unopened to the sender. The witness statement provided to me after that hearing by the Crown describes the recipient of that parcel opening it, finding that nothing happened, but believed it to be a parcel bomb, contacted the New South Wales Police Force and they apparently took possession of it at 2.00 pm on Tuesday, 1 December.

The wrapping on that parcel clearly indicated that it was posted from Canberra the previous afternoon, and one might assume from that information that the Australian Federal Police had perhaps 10 hours advance warning to be on the look out for parcels of an identical appearance at the Fyshwick Mail Centre. Perhaps there is one further anomaly - there are a number of anomalies, but one particular discrepancy in the Crown evidence relates to a postal worker making a statement that the parcel that exploded was addressed to the suburb of Dickson, but of these 22 parcels, none of them are addressed to the suburb of Dickson, your Honour. I am not sure exactly what need to be done in relation to that problem, but it appears that no parcel had exploded at the time the Federal Police attended the mail centre and photographed all 22 parcels.

HIS HONOUR: Is that all you want to put before me?

THE ACCUSED: Well, I was puzzled about why originally the package identified as missing would have been posted to Melba and yet the package that was really not accounted for was posted to Queanbeyan and yet there was a Crown statement saying the package - a package had exploded unexpectedly addressed to Dickson. The only explanation I can find for the selection of Dickson is advice of a fellow detainee who had previously worked at the mail centre. He looked at the photos and said he was aware of a problem where a mop had been used to lift a ceiling tile and the result of that was to place a hole through the ceiling tile looking very similar to a photo taken by the police on this occasion.

The reason for lifting a ceiling tile was that a copper water pipe needed to be relocated in the roof in order to install an air conditioning duct and that there was a dent next to the new location of the copper water pipe, that dent having been put there when the copper pipe was originally installed and the only thing in particular about the Dickson white mailing bin where the explosion supposedly took place is that it is immediately beneath that part of the roof and ceiling tile that had been damaged at the time that this fellow detainee had worked at the mail centre.

5 HIS HONOUR: All right. Well, as I said, the normal course is that all cases coming up for hearing are listed at a call-over, the next one being at the beginning of June but in view of the fact that Mr Dunstan appears in person and is in custody, I think it is desirable that I should tentatively fix the trial at this stage and it can be confirmed at the call-over. The case cannot be listed before 19 July if that appears to be a suitable date. Is there any problem with that as far as you are concerned, Mr Dunstan, 19 July?

10 THE ACCUSED: No, I would prefer to have the matter dealt with as quickly as possible, your Honour.

15 HIS HONOUR: Well, it cannot be done before then. It may just be that there are other persons in custody who have been in custody longer and may have a claim to an earlier date, so it will have to be confirmed at the call-over but at the moment subject to confirmation at the call-over, I fix the trial date - or the commencement of the trial to be Monday, 19 July at 10 am. How long is it likely to last?

MR HEMPENSTALL: Two weeks, your Honour.

HIS HONOUR: There is no indictment at this stage, I take it?

20 MR HEMPENSTALL: No, there is a draft one done. It is expected to have one filed this week.

HIS HONOUR: How many counts?

MR HEMPENSTALL: That is something yet to be worked out, your Honour.

HIS HONOUR: About how many?

25 MR HEMPENSTALL: Could be up to 50 - 56.

HIS HONOUR: All right. All right, now, well, what do you say, Mr Dunstan? You said the date is all right, 19 July?

THE ACCUSED: Yes, your Honour.

30 HIS HONOUR: We will have to have more directions hearings before then. I will have to see the draft indictment - or the indictment that is filed. 50 to 56 counts is a lot. It makes for a complicated trial. What - - -

THE ACCUSED: I have sought to provide as much information as I could in a submission at the committal hearing in order to reduce the number of matters that are in contention, your Honour.

HIS HONOUR: Yes, I see. Sorry, what were you going to say?

5 MR HEMPENSTALL: That would be the maximum number of counts. It could be shorter, your Honour. It could be less.

HIS HONOUR: Well, I suppose, Mr Dunstan, you have to be told that there is a right to elect for trial by judge alone and you have to do that before the date on which the trial is fixed for hearing, is that right.

10 MR HEMPENSTALL: I think that is right, your Honour.

THE ACCUSED: I did actually in a letter sent to the Registrar elect for a trial by jury, your Honour.

15 HIS HONOUR: The power - or rather, the right is to elect for trial by judge alone. If you make no election, the trial proceeds before a jury. The election has to be made before the court first allocates a date for the person's trial. I suppose there is some doubt as to whether I have done that when I have tentatively fixed - - -

THE ACCUSED: That is still a suitable outcome, your Honour, that I am happy for a trial to take place before a jury.

20 HIS HONOUR: You say you have lodged a document in writing, is that right?

THE ACCUSED: When I sent a letter to the Registrar requesting this directions hearing, I nominated that I would like the trial to take place before a jury.

25 HIS HONOUR: Yes, well, I am just trying to find that.

THE ACCUSED: It will be the most recent letter on file.

HIS HONOUR: The Registrar?

THE ACCUSED: I have a copy of the - - -

30 HIS HONOUR: It is all right, just a moment. All right, well, I am told the document was received by way of fax.

THE ACCUSED: I have the original.

HIS HONOUR: You have got a copy of it, have you? Could I have a look at it please? All right. Well, you have asked for a bail application hearing to follow a directions hearing, is that right?

5 THE ACCUSED: Sorry, your Honour, my understanding was that I would need first to have the matter listed for trial and then give some thought to applying for bail on a later occasion.

HIS HONOUR: Yes. Well, with - well, that is not right. I mean, you can apply for bail at any time. You do not have to wait for the trial
10 date to be fixed but I think in view of the mandatory requirements of section 68B of the Crimes Act it would be better if I allocate a date for trial now regardless of the call-over. If other people complain that Mr Dunstan has been given preferential treatment, well, I am sorry. So I allocate Monday, 19 July as the date for Mr Dunstan's trial and it is
15 noted that Mr Dunstan has not elected in writing to undergo trial by jury. He has not produced a certificate signed by a legal practitioner on that matter and he has in fact done the opposite, he has told me verbally and he has lodged a document with the court stating that he wants trial by jury. So trial by jury will follow as a matter of law. All right, well,
20 the date has been allocated. The trial date is fixed. What do you want to say about bail?

THE ACCUSED: I guess in relation to bail, I understand that previously reasons given for refusing me bail relate to the extreme
25 danger that these devices supposedly caused and the massive - and the amount of damage that they were able to create at the Fyshwick Mail Centre. It appears that that evidence is greatly exaggerated, to put it quite mildly, and in fact that no explosion took place at the Fyshwick Mail Centre and I hope that in the submission I put before the
30 Magistrates Court at the committal hearing, that that would assure the addressees that they are in no continuing danger and indeed were never in any danger and I hope that that would address the risks or concerns for safety in the community.

Your Honour, I note that when bail was revoked I was given a fairly firm warning three days before that happened but I certainly did not
35 make any attempt to abscond and I am in fact quite keen to have the matter heard. I do not have any intention of absconding. I believe the third matter is in relation to reasons for bail and representing myself. Your Honour, it would be of great assistance to me if I was to have a little bit of time removed from custody in the lead up to the trial to be
40 able to prepare better for the hearing, your Honour.

HIS HONOUR: Well, of course there is a presumption of innocence but if you need to prepare for the hearing, what actually is it you need to prepare? Are you denying that you despatched these items or - - -

5 THE ACCUSED: No, given a fairly full admission - a full account of my intentions and conduct in the Magistrates Court at the committal stage - - -

HIS HONOUR: You gave evidence before the Magistrate?

10 THE ACCUSED: Yes, I have documentary evidence that should be unfold that - I said I hoped would go some way to reduce the fears of the addressees that they were ever in any danger or were in any continuing danger, your Honour.

HIS HONOUR: Have you filed an affidavit in support of your present application for bail?

15 THE ACCUSED: No, your Honour. That is - as I said in that faxed letter - - -

HIS HONOUR: I think you should do that.

THE ACCUSED: - - - I thought that it would probably be most appropriate to lodge a bail application at a further - on a further occasion other than today.

20 HIS HONOUR: Yes. Well, I think that should be done. I think you should file an affidavit if you wish to press this application for bail. It will need to be supported by an affidavit.

25 THE ACCUSED: And would that be appropriate to, for example, annex the submission that I had made in the Magistrate's Court or may I simply refer to that as being a document on file?

HIS HONOUR: If there is any document you want to rely upon it is appropriate either that you annex it or - - -

THE ACCUSED: It is probably simpler if I annex it.

30 HIS HONOUR: - - - refer to in some way in which I can acquaint myself with it.

THE ACCUSED: Okay. Very good, your Honour, thank you.

HIS HONOUR: All right. Well, I am going to stand over the question of bail, Mr Prosecutor. Is it opposed?

MR HEMPENSTALL: It is opposed, your Honour, yes.

5 HIS HONOUR: Yes, all right. Now, as Mr Dunstan is appearing for himself I think we will have to sort out another matter. I do not want an application made the day of the trial for a stay.

MR HEMPENSTALL: No.

10 HIS HONOUR: Do you understand, Mr Dunstan? If you are appearing for yourself you are under a disadvantage. I take it you have applied for Legal Aid have you?

THE ACCUSED: Yes. The most recent I heard was that they thought that they could take a fairly leisurely approach to assessing my application for Legal Aid.

15 HIS HONOUR: It is most unlikely that you would receive a reply in those terms. I have never known them to do anything leisurely at the Legal Aid Office. They sometimes take quite a while to do things but they have got a lot to do.

THE ACCUSED: No, I am sorry, your Honour, that was the word that they used in the reply that I had received.

20 HIS HONOUR: Well, if you get Legal Aid, you will have somebody appearing for you I take it. You want somebody to appear for you?

THE ACCUSED: I think that would be certainly preferable, your Honour.

25 HIS HONOUR: You have no indication from the Legal Aid Office as to how long they will take to process your application?

THE ACCUSED: No, they gave no indication other than the word "leisurely" implies that they were not going to do it quickly.

HIS HONOUR: Yes, all right. Do you want to say anything?

30 MR HEMPENSTALL: Perhaps the matter can be raised again at the next callover, your Honour.

HIS HONOUR: Yes. All right, Wednesday 2 June. I stand over the application for bail till Wednesday 2 June and Mr Dunstan is to file an affidavit in support of that application within 14 days.

THE ACCUSED: Yes, that would be fine, thank you, your Honour.

5 HIS HONOUR: All right. I direct that inquiries be made of the Legal Aid Commission with regard to Mr Dunstan's application for Legal Aid for the trial and request that the Legal Aid Commission make known its attitude by Friday 21 May. In the event of Legal Aid being refused,
10 Mr Dunstan should file any further affidavit upon which he might wish to rely if he wishes to pursue an application for a stay of proceedings. Is that all clear.

MR HEMPENSTALL: Yes, your Honour.

THE ACCUSED: Yes, your Honour.

HIS HONOUR: Do you understand, Mr Dunstan?

15 THE ACCUSED: Yes, your Honour.

HIS HONOUR: Yes, all right then. Well, the application for bail is stood over till Wednesday 21 June. Mr Dunstan is to file - - -

MR HEMPENSTALL: 2 June?

20 HIS HONOUR: What did I say - Wednesday 2 June. Mr Dunstan is to file an affidavit in support within 14 days. I direct inquiries to be made of the Legal Aid Commission of its attitude to Mr Dunstan's application for Legal Aid. I request that that attitude be made known by Friday 21 May. In the event of Legal Aid being refused and if
25 Mr Dunstan wishes to pursue an application for a stay of proceedings for that reason, he is to file any further affidavit upon which he wishes to rely before 2 June.

MR HEMPENSTALL: Yes, your Honour.

HIS HONOUR: Is that all right as far as the prosecution is concerned? Do you want the affidavit in advance of 2 June, if there is one?

30 MR HEMPENSTALL: I think it was to be filed within 14 days was it not, your Honour.

HIS HONOUR: No, that is the affidavit in support of the application for bail.

MR HEMPENSTALL: Yes. That is the only one we are concerned about.

5 HIS HONOUR: Yes, thank you, I will adjourn now.

ADJOURNED INDEFINITELY

[10.09am]