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THE DISTRICT COURT OF  
WESTERN AUSTRALIA

1767 of 2009

STATE OF WESTERN AUSTRALIA

and

BRENDON LEE O'CONNELL

WISBEY DCJ

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 25 JANUARY 2011 AT 10.13 AM

MR A.E. EYERS represented the State of Western Australia

Accused in person

**WISBEY DCJ:** Madam Sheriff's Officer, as I understand the position, Madam Foreman has made contact to indicate that she is ill and I think has a medical appointment later in the day?

**SHERIFF'S OFFICER:** Yes, that's right, your Honour.

**WISBEY DCJ:** And beyond that, presumably you don't know a great deal about the state of the illness?

**SHERIFF'S OFFICER:** She's had vomiting and diarrhoea all night last night. She said she wasn't well yesterday through the day, but had hoped it would pass, but it hasn't and she's still - - -

**WISBEY DCJ:** Yes.

**SHERIFF'S OFFICER:** She's still in the same situation.

**WISBEY DCJ:** Yes, thank you.

Yes, Mr Evers, do you wish to comment on the matter?

**EYERS, MR:** On the basis of the stage that we've reached, I don't think the fact that the juror in question is the foreperson at this stage has particular significance given the stage the trial's reached. Also bearing in mind the open-ended nature of what she is or may be suffering from, I would invite your Honour to exercise your discretion under section 115 of the Criminal Procedure Act 2004 and simply discharge this juror on the basis that we have two spares in any event. That's my application, your Honour.

**WISBEY DCJ:** Thank you.

Yes, do you wish to say anything, Mr O'Connell?

**ACCUSED:** My name is Brendon Lee of the family O'Connell. I'm a sovereign subject of Queen Elizabeth II. I'm a free man. I know I'm in an admiralty law court. I'm here under duress fearing loss or damage.

Mr Wisbey, I take it was counsel - Mr Evers aware of - I notice he had already had up - was it part of the Criminal Code?

**EYERS, MR:** Yes. I was informed, just to assist, when I came into court this morning, because I've been here some not little time already - I was informed by the associate

that one of the jurors may be ill, so I looked up the relevant section. Mr O'Connell of course has only just attended court.

**ACCUSED:** I'd like to seek an adjournment myself so I can seek legal advice, because I'm not aware of the significance of - particularly a fore - the foreman or forewoman being ill.

I've already made many errors and not exercised my rights as the accused, and I'd ask your Honour to adjourn for a full day so that I can also go over the court transcript from Rabbi Freilich, which I was not given on Friday, despite being handed to me in court - handed to my guard and then not handed to me when I left court.

So I think that would tie in well. I think an adjournment - so I could slip over and see Mr John Bougher, who's still acting for me as a solicitor.

**EYERS, MR:** Your Honour, obviously Mr O'Connell's made his application. It's predicated upon the deficiencies due (inaudible) entirely to his own choice. He's been given two lawyers. He's dispensed with the services of both. That's a misfortune, but one he's visited upon himself.

I'm more than happy, as an officer of the court, to show - there's really very little learning on it. Indeed, it's section 115. I'm very happy to show him the section. The fact is, of course, your Honour has an unfettered discretion.

**WISBEY DCJ:** Yes, thank you.

**ACCUSED:** May I respond, your Honour, sir?

**WISBEY DCJ:** Well, you needn't, because the position I'm going to take will - - -

**ACCUSED:** Well, Mr Eyers has made allegations I've dispensed with two lawyers. I'd like it on the record what - - -

**WISBEY DCJ:** Well - - -

**ACCUSED:** The first one, Mr Rod Keeley, was rung for me by the arresting detectives. So I'd like that - - -

**WISBEY DCJ:** No - - -

**ACCUSED:** I'd like that clarified on the record.

**WISBEY DCJ:** Well, it's - - -

**ACCUSED:** I didn't just dispense with my lawyers, and I dispensed - didn't dispense - and I dispensed amicably, or parted ways very amicably, with Mr John Bougher.

**WISBEY DCJ:** It will be on the record, but it's not relevant because the jury don't know about it and the jury won't know about it.

**ACCUSED:** I would like to be able to seek legal advice, because I don't trust this court - - -

**WISBEY DCJ:** Well - - -

**ACCUSED:** - - - one single bit, nor do I trust you, sir.

**WISBEY DCJ:** Well, you - - -

**ACCUSED:** Specifically, Mr Wisbey.

**WISBEY DCJ:** Well, you can please yourself what you do.

**ACCUSED:** Indeed I can. Thank you for advising me.

**WISBEY DCJ:** But perhaps whilst we're dealing with it, why were you late this morning?

**ACCUSED:** I wasn't late. I got here at 9.15.

**WISBEY DCJ:** Did you?

**ACCUSED:** Yes.

**WISBEY DCJ:** All right. Thank you.

The position has been reached in this matter where the court has been advised that the foreperson is ill and unavailable today. Such information, as has been provided, would reasonably indicate that the problem is likely to be of short duration, that is that she would be able to continue to perform the jury obligations on Thursday.

In those circumstances I am not satisfied, particularly having regard to the fact that she's been the foreperson for now almost a week and a half, that it would be

appropriate to discharge her. And I propose to simply get the jury in, refer to the matter and advise them to retire and return in time for a 10 o'clock start on Thursday.

**ACCUSED:** If I may ask you a question, Mr Wisbey?

**WISBEY DCJ:** Just one moment. Yes.

**ACCUSED:** With regards - now, is this going to impinge on the time allotted to the trial?

**WISBEY DCJ:** Well, obviously it's going to because we're losing a day, but that is unfortunate.

**ACCUSED:** Well, I'd hate to take up the court's valuable time. I realise it's a valuable economic stimulus to keep the court going but what price justice? I just need to clarify that I'm not going to lose any time with which - because we have to go back to this and I have the relevant Criminal Code which I'll be taking up on Thursday.

So I just want to put on the record; will I be losing time? And also I've already lost time with the Rabbi Freilich, the failure to be handed the - - -

**WISBEY DCJ:** Well, when you say "losing time" the case will go on until it is finished.

**ACCUSED:** Well, that's - I'm - thank you, sir. I'm glad I've been made aware.

**EYERS, MR:** Your Honour, can I respectfully make a suggestion, in the slightly unusual position where Mr O'Connell is representing himself? Although we don't have the jury this morning, your Honour may well be in a position to rule, so far as the admissibility of these items, because we could valuably use that time.

**WISBEY DCJ:** I think that that ruling will be more appropriately made at the conclusion of your cross-examination because matters will then be clear as to any issues that have arisen.

**EYERS, MR:** Certainly.

**WISBEY DCJ:** Can we have the jury in, thank you?

(At 10.21 am the jury returned)

**WISBEY DCJ:** Ladies and gentlemen, you're obviously aware of the fact that the foreperson is ill. Apparently she has not yet seen a doctor but such information, as we have received, would suggest, I think, that it could be reasonably expected that she will have recovered by Thursday morning. That is that she can continue to perform the obligations which she has undertaken.

In those circumstances, regrettable though it is, I've no choice but to ask you to retire and return in time for a 10 o'clock start on Thursday. You'll appreciate, of course, in the circumstances that is the only course that I can take. So if you'd retire and return in time for a 10 o'clock start on Thursday.

(At 10.22 am the jury retired)

**WISBEY DCJ:** I have prepared really an extended form of the elements of the offences in the manner in which I propose to charge the jury. I'll hand down copies so that both parties can consider them in the meantime.

And bail is extended through to Thursday at 10 o'clock on the conditions that already apply. Mr O'Connell is not to leave the court before half past 11.

AT 10.23 AM THE MATTER WAS ADJOURNED UNTIL  
THURSDAY, 27 JANUARY 2011