

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

JUDGE C ARMITAGE  
AND A JURY OF TWELVE

PARRAMATTA: TUESDAY 8 JUNE 2010

**2009/59266 - R v John WILSON**

**SUMMING-UP CONTINUED**

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JURY CONTINUED TO CONSIDER ITS VERDICT

HIS HONOUR: I've received a jury note, Mr Wilson and Mr Crown.

"We have a unanimous decision on charge 1 but have a ...split on charges 2 and 3 and we are unsure of how we are to proceed."

The reason I've said dot dot dot is that they gave me the numbers of the split. Mr Crown knows, but you don't Mr Wilson, so I'll have to say it. The law is that where a judge receives a note from the jury giving numbers he must not or she must not let counsel for the Crown, or counsel for the accused, or the accused himself, see it. That's because it's a breach of the Jury Act. It is sufficient to say that the split is not insignificant.

What I would do in these circumstances - Mr Crown knows what I should do but Mr Wilson I will tell you. It is customary to take the verdict on the count on which they are unanimous and then advise them to go and deliberate further in relation to the other two counts. The reason that course is taken is that if they are simply told to continue deliberating there is a danger that the verdict on the first count on which they're unanimous may change. And because we don't know whether that's guilty or not guilty there is the chance that an accused may lose the chance of obtaining the unanimous verdict in his or her favour when they say they're unanimous.

In other words, as soon as the jury says that they've reached a unanimous verdict on one count it's thought proper to take that verdict on that count and then tell them to deliberate on the others. I'm sure you can understand why that's the case. So that's what I propose to do. Does either of you want to say anything?

ACCUSED: Yes, well the judgment has to be unanimous.

HIS HONOUR: Of course.

ACCUSED: And it has to be unanimous.

HIS HONOUR: Well there is provision for majority verdicts but they've been deliberating, as I counted between 2 and 4 yesterday and between 10 o'clock this morning. I said that I'd assume they start deliberating at 10 o'clock unless I heard to the contrary. And I received the note just after 11 o'clock. So let's say they've been deliberating for three hours. There is provision for a majority verdict after eight hours. I mustn't say anything to the jury and neither must either of you in their presence about that at this point. But the fact is we're nowhere near the point where a majority verdict even comes into consideration. So what I must do is simply tell them to continue deliberating and endeavour to reach a majority on counts 2 and 3.

ACCUSED: Are you saying that they bring in the unanimous decision now and then go away and consider the other two?

HIS HONOUR: I'm sorry Mr Crown what did you say?

CROWN PROSECUTOR: I said "unanimous". Your Honour said 'majority'.

HIS HONOUR: No, I'm sorry, I meant "unanimous".

CROWN PROSECUTOR: Yes.

HIS HONOUR: What I propose to do, Mr Wilson, is take their unanimous verdict on count 1 and then, having done that, tell them to go away and continue deliberating and endeavour to reach a unanimous verdict on counts 2 and 3. Are you both happy with that?

ACCUSED: No. I think the number 1 charge is the important one and the other ones are nonsense and they should be withdrawn.

HIS HONOUR: Well the Crown is not going to do that.

CROWN PROSECUTOR: My client's entitled to take the verdict to the jury.

HIS HONOUR: If the Crown doesn't do that Mr Wilson, I can't make it. It's as simple as that. But Mr Wilson, what I propose to do, as I've said, is to take the unanimous verdict on count 1 charge 1, which as you say is the more important one--

ACCUSED: It's well done.

HIS HONOUR: --and then ask them to endeavour to reach unanimous verdicts on counts 2 and 3. Are you both happy with that?

CROWN PROSECUTOR: Yes, your Honour. Will you only give a Black direction or--

HIS HONOUR: Not at this point.

CROWN PROSECUTOR: No.

HIS HONOUR: Mr Wilson, are you happy with that?

ACCUSED: Well it's got to be unanimous that's without - for sure and the--

HIS HONOUR: I understand what you say. Are you happy for me to take a unanimous verdict on count 1 and to tell them to try to reach a unanimous verdict on counts 2 and 3?

ACCUSED: As long as you understand that you've got no jurisdiction to--

HIS HONOUR: I've heard what you've said. I've ruled in relation to that--

ACCUSED: You can't even do that.

HIS HONOUR: All right. Well I'll go ahead and do what I propose to do Mr Wilson.

ACCUSED: You're only a crime judge, you've got no jurisdiction in this place at all.

HIS HONOUR: I understand that you've said that. We disagree about that.

ACCUSED: That's the meaning of the words.

HIS HONOUR: Mr Wilson, I understand what you say about that. There comes a point at which I just have to say, I'm sorry we've just got to disagree about that. All right.

ACCUSED: All right as long as you admit that he's wrong.

HIS HONOUR: Well I haven't done anything, Mr Wilson. We'll get the jury. Madam Associate the appropriate thing to do is to take the jury's verdict on count 1 away. I shall simply tell the jury that in relation to counts 2 and 3 they already have my directions, they should continue discussions in an attempt to reach a unanimous verdict and if they have any queries let us have a note.

ACCUSED: Excuse me, why are the sheriffs here?

HIS HONOUR: They've been here throughout the entirety of the trial.

ACCUSED: Why are they here now? Do they have fore knowledge of the verdict?

HIS HONOUR: It is not for me to answer your questions.

ACCUSED: Do they have prior knowledge of the verdict?

HIS HONOUR: Of course not. Let's get the jury.

JURY RETURNED TO COURT AT 11.32AM

HIS HONOUR: Thank you ladies and gentlemen. I have a note from you. It reads this way, leaving out something I have to leave out.

“We have a unanimous decision on charge 1 and have a so and so split on charges 2 and 3 and we are unsure of how we are to proceed”

The law is that I must not disclose the split that you disclosed in relation to counts 2 and 3 in open court and I have not done so. The jury note will be MFI 24 and placed with the file - an envelope should be found. It should be placed in the envelope with “Jury Note MFI 24. Not to be disclosed” written on it. I have disclosed everything in it apart from the figures and the split. In those circumstances ladies and gentlemen the proper course is to take your verdict on count 1 and then ask you to continue deliberating on the remainder of the counts. I shall do after I’ve taken the verdict on count 1.

Read the count.

CROWN PROSECUTOR: One moment your Honour. The accused ought to return to the other end of the bar table.

HIS HONOUR: Yes, would you return to the other end of the bar table.

ACCUSED: ..(not transcribable)..

HIS HONOUR: Well Mr Wilson you’ll be able to hear it from the other end of the bar table. I’ll ask the foreperson to speak up. Back to the other end of the bar table, Mr Wilson. Just a moment, Madam Associate you need to read count 1.

ASSOCIATE: How say you as to the first charge: is the accused John Wilson guilty or not guilty that between 11 July 2009 and 14 July 2009 at North Rocks in the State of New South Wales he did break and enter the dwelling house of Kamal Issa at 331 North Rocks Road, and then commit a serious indictable offence therein namely intentional or reckless damage or property belonging to Kamal Issa.

JURY DELIVERED A VERDICT OF GUILTY TO THE FIRST CHARGE AT 11.35AM

ACCUSED: I challenge the jurisdiction of the court. This is not a jury.

HIS HONOUR: Mr. Wilson.

ACCUSED: It is 12 ignorant, incompetent, gutless people who haven't got a clue what they're doing.

HIS HONOUR: Mr Wilson. Officer, take Mr Wilson--

ACCUSED: You have lied to the jury.

HIS HONOUR: Take Mr Wilson--

ACCUSED: You have lied to the jury and you have misled them. You have lied to the jury and you have misled them.

HIS HONOUR: Take Mr Wilson into the dock please.

ACCUSED: You have lied to the jury and you have misled them.

ASSOCIATE: Members of the jury you say the offender is guilty on the first count of the indictment.

SPEAKER: Yes.

ASSOCIATE: So says your foreman and so say you say you all.

ACCUSED: I can't hear.

HIS HONOUR: Ladies and gentlemen in relation to the remainder of the counts I must ask you to continue deliberating keeping in mind the directions I have given you and of course keeping in mind the whole of the evidence and the submissions Mr Wilson made. I have endeavoured to correct those submissions where they are incorrect in law but apart from that you must give Mr Wilson's submissions careful consideration.

You must give the Crown's submissions careful consideration and likewise the directions I've given you including the written directions in relation to counts 2 and 3. You must particularly remember my summary of the Crown case which was a summary of the evidence upon which the Crown relies and upon which it submits that you will find the accused guilty of each of the other two counts. And you must remember also not only Mr Wilson's submissions but the arguments that I put on Mr Wilson's behaviour as was my duty in terms

of simply reminding you of arguments that could be put on behalf of the accused in relation to counts 2 and 3 which counsel might have put for him had he been legally represented. That is what a judge must do in these circumstances.

I remind you also that they are not directions as the other directions are, they are simply arguments that could have been put by counsel and in consequence what you think of them is entirely a matter for you. However, you must accept my directions of law in relation to the elements of counts 2 and 3 and in relation to how you are proceed as a jury. If you have any further queries ladies and gentlemen please send me a note.

ACCUSED: Go in disgrace. Go in disgrace.

JURY RETIRED TO FURTHER CONSIDER ITS VERDICT AT 11.38AM

HIS HONOUR: I think it would be prudent if the accused remains where he is with the two sheriff's officers for the moment or the two officers that are with him, I think they're both sheriffs officers and I will adjourn and if somebody wants to get the accused some refreshment or something of that sort that would be fair enough, but I think at this point - may not be necessary for him to remain in there but he should be accompanied by two sheriffs officers for the whole of the time until the two remaining verdicts are taken. He is not in custody, his bail continues, but if there is any further disruption by the accused I want to be told because I may be obliged to revoke his bail which means that he will spend time in the cells until the verdicts on the other two counts are taken. I urge the accused to behave himself and not give the officers cause for complaint but to remain with them at all times.

CROWN PROSECUTOR: I notice, your Honour, we did not get and I assume your Honour has not got, a copy of your Honour's summing-up to the jury, it didn't come this morning.

HIS HONOUR: No. Well unless and until it comes there is nothing I can do about it.

CROWN PROSECUTOR: Well--

HIS HONOUR: I don't normally need it in the course of a trial.

CROWN PROSECUTOR: Well of course your Honour has given the jury twice now the substance of your Honour's summing-up on counts 2 and 3.

HIS HONOUR: Yes. Well and unless and until the ask for further directions I don't propose to say anything further to them. Unless of course the - I get another note saying they've still got persistent disagreements and in those circumstances I will consider giving them a Black direction. I just don't think it's appropriate after three hours in a trial of this type.

CROWN PROSECUTOR: Please the court. One thing I am reminded of, your Honour might consider varying bail so that the accused does not leave the precincts of the court or wander around except in the company of a sheriff's officer.

HIS HONOUR: Yes. I have - I varied the conditions of the accused's bail imposing further conditions that the accused, until verdicts are taken on the remaining two counts, not leave the precincts of the court and be in the company of two sheriff's officers at all times.

CROWN PROSECUTOR: Please the court.

HIS HONOUR: I'll adjourn. Yes, we'll take the morning tea adjournment in the other trial and then we'll resume. I'll adjourn.

#### SHORT ADJOURNMENT

HIS HONOUR: Mr Wilson can remain in court if he's prepared to be quiet. Mr Wilson can remain in court if he's prepared to be quiet. You may remain in court, Mr Wilson, as long as no disruption occurs. I have a note from the jury, it reads, "Is the transcript available from yesterday, if so can we please get a copy". Now the answer to that is that they are entitled to a transcript of what took place in their presence, that will be the address by Mr Wilson, the address by you, Mr Crown. It will not include any directions I gave them because there is a separate transcript for directions and the directions I gave them in the response to the note yesterday in relation to count 2 are not on the transcript either. What is on the transcript is everything that occurred up to but not including my summing-up.

CROWN PROSECUTOR: I think what they want, your Honour, is your summing-up.

HIS HONOUR: I suspect they probably do in which case - I think I have to ask the foreperson a question in open court as to which transcript they want.

CROWN PROSECUTOR: Yes.

HIS HONOUR: Mr Wilson, that's what I propose to do. I urge, Mr Wilson, that you keep quiet, not just to maintain order but for this reason. The jury at this stage, whether you believe it or not, are still deliberating and probably still split as to your guilt on charges 2 and 3. It will not be in your interests to make a big insulting fuss in their presence because they are still thinking about whether or not you are guilty of counts 2 and 3. If you are not, of course the question of punishment for those offences doesn't arise. That will be a very important consideration when I come to consider what should happen in

relation to count 1. Imprisonment is not automatic on count 1. I haven't the faintest idea what I will do at this point, but I point out to you that it is not in your interests to get the jury offside at this point, particularly when they are considering counts 2 and 3. I am not giving you permission to insult the jury when they come in with their verdicts on counts 2 and 3, that's a breach of proper court order and probably also an offence. But it is very important at this point that you don't upset them in relation to counts 2 and 3 because they are still thinking about it and they may, for all we know, let you off.

ACCUSED: But they don't come within cooe of being a jury.

HIS HONOUR: I hear that Mr Wilson.

ACCUSED: Well it's a fact.

HIS HONOUR: Let's get the jury in.

ACCUSED: They denied the law.

HIS HONOUR: Let's get the jury in.

ACCUSED: They denied evidence--

HIS HONOUR: Please - please maintain order in their presence, Mr Wilson.

ACCUSED: Of course, yes.

HIS HONOUR: My strong advice that you do so. As a matter of fact I'm going to tell them that they shouldn't be prejudiced by the way you behaved after the verdict on count 1.

ACCUSED: When you won't allow them to see my website, you know, how ludicrous is that--

HIS HONOUR: Mr Wilson, we have already been - we have been through that and I made a decision--

ACCUSED: Yeah, that's right, I'll keep on doing it.

JURY RETURNED TO COURT AT 12.00PM

MFI #25 JURY NOTE

HIS HONOUR: Ladies and gentlemen, I have received a note from you which I will mark MFI 25. The parties may inspect this note, it reads, "Is the transcript available from yesterday, if so can we please get a copy?" Foreperson, I have to ask you a question in open court with the agreement of the parties, it is this,

perhaps you could stand up, do you want a transcript of each of the parties' addresses to you or do you want a transcript of my summing-up yesterday?

FOREPERSON: Just of your summing-up.

HIS HONOUR: That is what I feared. We do not have at this point a transcript of my summing-up. The reason is this, they are not usually required in the course of a trial. It is probable that you do not want the entirety of the transcript of my summing up. It is probable that you require certain parts of it, probably in relation to counts 2 and 3.

What I would ask you to do rather than telling me now is it is customary to get the agreement of the jury before you write a note to me. I knew that you would know what part of the summing-up the jury wants, at this point I must ask you to retire with the jury, get their agreement as to what particular parts of my summing-up yesterday you want me to repeat and then when you have given me that I will repeat those parts of my summing-up after of course consulting with the parties about it.

I do want to say one thing to you at this point though, this has been an unusual trial. The accused has presented in a way that some of you may find challenging to say the least. That is life's rich pattern I am sorry to say, we have to take people as we find them. But there is one very important thing you must keep in mind in relation to that and it is this, when you are considering the remaining counts the question for you on each of those counts is has the Crown proved the elements of the offence charged beyond reasonable doubt?

You have to examine every element of each of the charges and ask yourself whether the Crown has proved each of those elements beyond

reasonable doubt. The elements or ingredients are there, they are numbered on the piece of paper that I gave you earlier. You must put out of your mind any prejudice you may feel, any dislike you may feel, any other emotions you may have in relation to the accused when you consider the question of whether the Crown has proved the elements of each of the remaining counts, counts 2 and 3, beyond reasonable doubt.

I said at the beginning of my summing-up that you must not let sympathy or emotion sway your judgment. That means sympathy or emotion either in favour of the accused or against him, particularly against him. You must consider the question of his guilt or innocence on the remaining charges coldly, rationally and clinically. That is how you approach your task. That is what judges are supposed to do, I like to think we do, and you are judges of the facts so that is what you have got to do. I am giving you a strong direction about that.

As I have said, any parts of the summing-up that you want me to repeat you write a note and tell me and after consulting the parties unless there is any particular reason not to do it I will do it in as far as I can precisely the form that I did it yesterday because in large part I have notes of what I told you yesterday. I would ask you to retire and formulate your note through your foreperson.

JURY RETIRED TO FURTHER CONSIDER ITS VERDICT AT 12.05PM

CROWN PROSECUTOR: Your Honour, normally the copies of the two pages or three pages that your Honour supplied to the jury would be taken in and destroyed.

HIS HONOUR: That's something I forgot to do. The elements sheet should be MFI 26.

MFI #26 DOCUMENT SHOWING ELEMENTS OF CHARGES

CROWN PROSECUTOR: Precisely so, your Honour, sometimes in another place there isn't one.

HIS HONOUR: I know, my associate has a copy and that should be MFI 26.

CROWN PROSECUTOR: Not to be uplifted.

HIS HONOUR: And it should be marked "Not to be uplifted" but it can of course be read so there's no point in placing it in an envelope.

CROWN PROSECUTOR: Yes.

HIS HONOUR: All right, I'm going--

ACCUSED: So to put it simply you have manipulated the jury to rule that we don't have the right to trial by jury.

HIS HONOUR: Mr Wilson, no further argument.

ACCUSED: You have manipulated--

HIS HONOUR: No further argument, I propose to adjourn. If there's any further disruption from Mr Wilson I will consider revoking his bail. Now, at this point I'm going to adjourn and take a short morning adjournment, because it's been substantially disrupted so far as the start's concerned, and then I'll resume the other trial.

CROWN PROSECUTOR: May it please the court.

ACCUSED: He's had the jury decide we don't have the right to trial by jury, it's as simple as that. What a farce.

#### SHORT ADJOURNMENT

HIS HONOUR: Mr Wilson I'll just ask you to come forward. Mr Wilson and Mr Crown, I have another jury note. It reads:

"We have a unanimous decision on charge 2 and" - the figures are given - "a decision on charge 3".

Because the figures are given it is the law that I may not disclose the jury numbers to you on charge 3. Mr Wilson and Mr Crown, the jury started deliberating at 2 o'clock yesterday and I am told by the officers went home at some time after 4 o'clock after I directed them at 4 o'clock as to things they could and couldn't do. So it appears they deliberated for two hours yesterday. I ask you both does that appear to be correct?

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: Mr Wilson do you agree with that?

ACCUSED: It's not a jury anyway. They only your puppets.

HIS HONOUR: Mr Wilson, I'm just asking you--

ACCUSED: You're dictating what they can and can't do.

HIS HONOUR: I'm just asking you--

ACCUSED: They're not a jury.

HIS HONOUR: I'm asking you Mr Wilson, one thing. Do you agree that the jury deliberated, that is to say that they are in the jury room deciding what they were going to do between 2 and 4 o'clock yesterday.

ACCUSED: Were they doing that?

HIS HONOUR: Well they were in there discussing the case, one presumes. We are not allowed to know what took place inside the jury room as we all know. Unless you have anything to say to the contrary, I propose to find that they deliberated between 2 o'clock and 4 o'clock yesterday. Do you wish to say anything to the contrary?

ACCUSED: You're saying that they deliberated between 2 and 4 o'clock yesterday?

HIS HONOUR: Between 2 o'clock and 4 o'clock yesterday.

ACCUSED: What's that mean? What's that mean?

HIS HONOUR: It means that they were in the jury room discussing the case. Well that's what I propose to say. Now I got them in this morning at - I think there have been a few interruptions this morning - they started deliberating at 10 o'clock I'm told. It is now 4 o'clock. That makes five hours at most. I would suggest that allowing for interruptions it makes four hours. That is to say between 10 o'clock and 1 o'clock, that's three hours and 2 o'clock to 4 o'clock, that's two hours. That's five hours altogether. I think counting the interruptions and of course taking out the lunch hour, it probably equals four hours. It follows that they've been deliberating for seven hours.

CROWN PROSECUTOR: No, six, your Honour. Your Honour did say that taking into account--

HIS HONOUR: Yes I'm sorry. That means they've been deliberating for six hours. It follows that nothing concerning the majority verdicts--

ACCUSED: No, majority verdict - that's not a verdict.

HIS HONOUR: Thank you. Nothing concerning the majority verdicts legislation is engaged by the time they've been deliberating.

CROWN PROSECUTOR: No, that's so.

ACCUSED: That's all garbage. You know. That's all garbage isn't it.

HIS HONOUR: Mr Wilson, if you interrupt further I'll have you placed in that dock.

ACCUSED: Strike me pink. Get it - strike me pink?

HIS HONOUR: Mr Wilson, if you interrupt further I shall have you placed in that dock. I don't want to do it. Now what I propose to do is to take the jury's unanimous decision on charge 2 and urge them to keep--

ACCUSED: Whatever you do is unlawful anyway.

HIS HONOUR: --and keep - one more interruption and you're in the dock. And keep them deliberating on charge 3. I don't want you interrupting while they are present. It is against your interests because they are still deliberating on charge 3. They may find you not guilty. So just keep in mind the more you play up in front of the jury the more the danger - despite how many times I tell them not to be prejudiced that it may work against you. So please when the jury are in here keep quiet.

CROWN PROSECUTOR: Your Honour, will you invite the jury to remain after 4 if they so desire?

HIS HONOUR: No, I think it's inappropriate. They've been busy all day. It will be trial by attrition if I do that. I don't think that's a good idea.

CROWN PROSECUTOR: I don't ask your Honour to do it.

HIS HONOUR: Yes. What I might do is say to the foreperson "If you think there is point in remaining this afternoon to continue your discussions for a short time you may do but I don't want to put any pressure on it and I would rather that you take the proper time". Look, when I think about it, Mr Crown, they're dangers in that course too. There may be a feeling of hurry. I really prefer to bring them in tomorrow morning, I think.

CROWN PROSECUTOR: I'm content with that, your Honour.

HIS HONOUR: Yes. I'm just trying to be as fair as I possibly can to you, Mr Wilson. Now let's get the jury in.

JURY RETURNED TO COURT AT 4.09PM

HIS HONOUR: Thank you ladies and gentlemen. I have received from you a note which I'll mark MFI 27. It should be placed with the papers and sealed with "MFI 27 Jury Note. Not to be opened" on it. It reads:

"We have a unanimous decision on charge 2 and a" giving certain

numbers which I may not reveal - "decision on charge 3".

In relation to charge 3, I must at this point ask that you continue deliberating - not this afternoon - and endeavour to reach a unanimous verdict. So far as charge 3 is concerned, I think you've been busy all day and if I keep you after 4 o'clock when some of you may have commitments to go to there is a risk that hurry will occur and people will feel pressured to reach a decision in a way that would be unfair to the Crown and particularly the accused. It is customary not to sit after 4 o'clock in these circumstances and I don't propose to change that custom in a trial where the accused is unrepresented. I don't think it's fair.

I will however take your decision on count 2. Madam Associate.

ASSOCIATE: All persons please stand. Have you agreed upon your verdict in relation to count 2 in the indictment.

SPEAKER: Yes.

ASSOCIATE: How say you as to count 2 that the accused John Wilson guilty or not guilty that on 14 July 2009 at Sydney in the State of New South Wales he did without lawful excuse make a threat to Andrew Scipione with the intention of causing of said Andrew Scipione to fear that property namely premises at 331 North Rocks Road, North Rocks, belonging to Kamal Issa would be damaged or destroyed.

JURY DELIVERED A VERDICT OF GUILTY TO THE SECOND CHARGE AT 4.11PM

ASSOCIATE: Members of the jury you say the accused is guilty on a second charge on the indictment.

SPEAKER: Yes.

ASSOCIATE: So says your foreperson and so says you all.

HIS HONOUR: Thank you ladies and gentlemen. As I have said, I must ask you at this point to continue deliberating tomorrow morning on count 3 and attempt to reach a unanimous decision. I think all I should say is that it's important that you all listen to each other's point of view on occasions further examination of each other's point of view leads to consensus being reached.

But nobody should feel they should have to go against judicial oath. If you reach a conclusion conscientiously on the evidence that is precisely what you're supposed to do. Just remember again all of the things I told you. In particular, don't talk to anybody at home about it and don't make any private enquiries of any kind.

We'll see you tomorrow morning. Come at the usual time. We'll assume you start deliberating at 10 o'clock in the morning unless we hear to the contrary. You may go with the others.

JURY LEFT COURT AT 4.13PM

ACCUSED: But they haven't taken an oath. I say again, they haven't taken an oath.

CROWN PROSECUTOR: Your Honour, that sounded very much like a substance of a Black direction. I was going to ask your Honour to give one in the morning. I think I covered--

HIS HONOUR: It's not as imperfect as a Black direction. I am a little reluctant and I'll hear you in the morning on the subject, Mr Crown. I don't know whether I should go any further than I just did.

CROWN PROSECUTOR: No, I appreciate why your Honour did that. Your Honour, I I don't oppose bail but--

HIS HONOUR: I just propose to remind the accused that a condition of his bail is that he be of good behaviour in every way. Good behaviour does not include disrupting the trial. Good behaviour in particular does not include engaging in any conduct whatsoever that could be interpreted as to use the words of the last judge "menacing, harassing or offensive or particularly threatening".

CROWN PROSECUTOR: Or contempt of court, your Honour.

HIS HONOUR: Well, quite so. My desire has been to get this trial to an end. I've given you, Mr Wilson, great latitude. I know that you've poured a lot of emotion into this trial. I know that you disagree profoundly with the way that I've conducted it. I know why you think that. I'm afraid sometimes judges just have to be strong and tell people they're wrong. Nonetheless, Mr Wilson, you are under a legal obligation to obey the conditions of your bail and they include behaving properly in court and out of it.

ACCUSED: Do you agree that all law hangs on loving God and loving your neighbour as yourself.

HIS HONOUR: I remarked about one day into the trial that that wasn't a bad summary as a matter of fact. There are many people who don't happen to have theistic beliefs. I don't mind saying that I have but that's nothing points so far as my role as a judge is concerned. But loving your neighbour as yourself is not a bad summary of the law. I am not going to, however, engage in debate either theological or otherwise with you. I just remind you of your obligation to behave properly in and out of court. I remind you that contempt of court which means disrupting proceedings and trying to prevent them continuing in an orderly way and particularly insulting either the judiciary or a jury is a serious offence. And a breach of your bail. It may oblige me to revoke your bail.

Keep in mind that so far as the first two charges are concerned of which you've been found guilty - I know you say that you haven't and so forth - but you have. I will have to sentence you on another day for those. And I will have to call for reports to enable me to find out any matters subjectively that concern you which might bear on the question of whether or not you go to gaol.

I'm particularly concerned to ensure that you properly examined so that if you've got not only - you may wish to - you would vehemently deny that there's any mental or emotional problem I'm sure - but it may be that you have physical problems which would cause hardship in custody.

ACCUSED: What problems?

HIS HONOUR: Physical problems which would cause hardship in custody such as a heart attack or a stroke or something like that. And I would need to have a medical report on those matters. I would also need to have a report from somebody properly qualified on your emotional condition because that may be what we call an exculpatory explanation to some degree for some of your conduct. In other words it may indicate that a less severe punishment is appropriate and that imprisonment may or may not necessarily be appropriate. It may not be appropriate, depending on what the elements show. So I'm going to be concerned to get all of the information I possibly can about you before I decide what to do with you on the first two counts.

As to the third count we'll see what happens tomorrow. But please keep all that in mind in the way you behave. I'm not making a threat that I'll necessarily sentence you more severely because you're guilty of other offences. That would offend a particular principle called the Di Simoni principle. But your general attitude too, what the jury now has found is your offending is something that will have to be taken into account and your conduct in court is relevant to that. So it's fair that I advise you to keep those matters in mind in the way you behave.

At this stage I will content myself with reminding you that your bail conditions involve being of good behaviour. I think you know what that means. It means not disrupting things in court and not attempting to do anything outside court that could disrupt the proceedings or could be regarded as in any way threatening or harassing or anything of that sort. I think fundamentally

Mr Wilson you try to be a person of good character so I don't think you're going to do any of those things. Please don't oblige me to do anything, to take any action, on your bail.

Stood over till tomorrow. Bail continued.

ADJOURNED TO WEDNESDAY 9 JUNE 2010

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