
TRANSCRIPT OF PROCEEDINGS

COUNTY COURT OF VICTORIA

CRIMINAL JURISDICTION

MELBOURNE

THURSDAY 13 DECEMBER 2018

BEFORE HIS HONOUR THE CHIEF JUDGE KIDD

DIRECTOR OF PUBLIC PROSECUTIONS v. GEORGE PELL

M E N T I O N

MS K. JUDD with MR M. GIBSON and MS A. ELLIS appeared on behalf of
the Director of Public Prosecutions.

MR R. RICHTER with MS R. SHANN appeared on behalf of the Accused.

1 HIS HONOUR: Madam Director.

2 MS JUDD: If Your Honour pleases, I appear with Mr Gibson and
3 Ms Ellis.

4 HIS HONOUR: Yes. Thank you. Mr Richter.

5 MR RICHTER: If Your Honour pleases, I appear with my learned
6 friend Ruth Shann.

7 HIS HONOUR: Thanks for coming at such short notice. Look,
8 it's probably self-evident why I've called this mention
9 on, in light of the publicity that's occurred overnight,
10 and I thought it would be better that this be ventilated
11 in open court rather than through correspondence.
12 Perhaps to put it into context, tomorrow, as I understand
13 it, an application is going to be made by the press for
14 me to revoke or vary my suppression order. I will deal
15 with that then. The media is not present now, so there's
16 nothing of substance that we're able to debate concerning
17 their conduct, but I just wanted to give the parties an
18 opportunity to assist me as to the way forward here.
19 Perhaps before you do that I will tell you what my
20 thinking is at the minute.

21 Some of the media that has occurred overnight at
22 the very least raises a serious question as to whether my
23 suppression order has been breached in the most egregious
24 way possible. The media coverage overnight also raises a
25 serious question, quite independently of that, of
26 contempt of the court, namely bringing inappropriate and
27 improper pressure upon me to vary or revoke my
28 suppression order application.

29 The question arises as to how these matters, those
30 potential serious breaches of the law, are to be
31 ventilated or exposed in court. My thinking at the

1 minute, but I will be assisted by what everybody says, is
2 this, that given how potentially egregious and flagrant
3 these breaches are, a number of very important people in
4 the media are facing, if found guilty, the prospect of
5 imprisonment and indeed substantial imprisonment, and it
6 may well be that many significant members of the media
7 community are in that potential position. That being the
8 case, that should inform us as to how the matter ought to
9 be dealt with. Because of the potential consequences for
10 a number of people, it struck me that if any breaches are
11 to be brought to the court whether, upon the basis of a
12 breach of my suppression order or contempt, or both, it
13 occurred to me that maybe, Madam Director, it is
14 something that you ought to be giving consideration to
15 and that if it is brought to the court that you bring the
16 charges to the court, so that all these people who may be
17 the subject of such charges are afforded with this
18 procedural fairness as much as is possible, given the
19 very significant and grave consequences which may well
20 flow from a finding of guilt. The alternative is to do a
21 summary form type procedure but I am at the moment a
22 little uncomfortable with that because of the very
23 significant consequences that will follow. So they are
24 my thoughts for the moment. Madam Director.

25 MS JUDD: Your Honour, my preference would be for you to leave
26 this to me.

27 HIS HONOUR: Yes.

28 MS JUDD: It is something that I am looking at at the moment.

29 Can I add into the mix of other possible offences, a
30 contempt in the sense of potentially prejudicing the next
31 trial. So you have got the suppression order breach.

1 HIS HONOUR: Indeed, yes.

2 MS JUDD: You have got the contempt you mentioned, but there is
3 also that contempt.

4 HIS HONOUR: The sub judice contempt.

5 MS JUDD: The sub judice contempt.

6 HIS HONOUR: You are quite right, I meant to mention that as
7 well.

8 MS JUDD: Yes, so there are the three areas.

9 HIS HONOUR: Yes.

10 MS JUDD: It is something that, given the circumstances and
11 given your involvement here and having made the
12 suppression orders, - - -

13 HIS HONOUR: Yes.

14 MS JUDD: That it is perhaps dealt with by a different judge.

15 HIS HONOUR: Yes.

16 MS JUDD: And it is something that is perhaps dealt with by me
17 instituting whatever proceedings that need to be
18 instituted.

19 HIS HONOUR: Yes.

20 MS JUDD: There are some considerations and I don't want to
21 elaborate on those at this point in time but there's
22 issues in terms of jurisdiction, extradition.

23 HIS HONOUR: Yes, indeed.

24 MS JUDD: All sorts of issues, so as I say they need to be
25 thought through a little bit carefully. All I can do
26 today is write a letter - this hasn't been sent yet but
27 I can give you an indication of the type, the draft
28 letter that I'm proposing.

29 HIS HONOUR: Yes, thank you. Just let me read it,
30 Madam Director. What is the maximum penalty for a breach
31 of the Open Court Act offence. I think it's - - -

1 MS JUDD: I think it's about five years.

2 HIS HONOUR: Five years.

3 MS JUDD: Now the difficulty with that is that ordinarily, and
4 this is also something that I'm looking at, ordinarily
5 when this occurs I actually ask the Chief Commissioner of
6 Police to investigate it and they institute the
7 proceedings.

8 HIS HONOUR: Yes.

9 MS JUDD: And we can take over that proceeding, but I'm also
10 conscious of other cases that have been held in the
11 Supreme Court, certainly in the past, and I don't know
12 whether it's before this legislation or not, where
13 contempt proceedings and breach of suppression orders
14 have been heard in the Supreme Court.

15 HIS HONOUR: Yes.

16 MS JUDD: So I need to work out some procedural issues as well.

17 HIS HONOUR: Yes. If proceedings are brought they ought to all
18 be brought at the same time, I would have thought.

19 MS JUDD: Indeed - indeed.

20 HIS HONOUR: They are all related.

21 MS JUDD: So I need to think that through in terms of the
22 appropriate procedure.

23 HIS HONOUR: All right. Well look, thank you for that letter.
24 I will hear what Mr Richter has got to say but I must say
25 that's - let's put to one side whether it's a different
26 judge or it's me, but I certainly agree for the moment
27 that given the potential significant consequences for a
28 number of people, then it's appropriate that the matter
29 be prosecuted by you, if they are to be prosecuted, and
30 that procedural fairness is afforded to all relevant
31 people to the maximum extent possible, bearing in mind

1 that it's always going to be a somewhat modified
2 approach.

3 MS JUDD: And that is particularly so if I decide that contempt
4 should be in the mix rather than simply a breach of the
5 proceeding suppression order.

6 HIS HONOUR: Yes. I suppose if it's just a breach of the
7 suppression order - - -

8 MS JUDD: I would be more comfortable with you doing it.

9 HIS HONOUR: Yes. All right, well I'll think about that as
10 well. All right.

11 MS JUDD: I still think it's better that it be removed.

12 HIS HONOUR: Yes.

13 MS JUDD: There are some other things that I wish to address
14 Your Honour on, but that's all in terms of what Your
15 Honour has just raised.

16 HIS HONOUR: All right. I will just hear from Mr Richter then
17 on that point and then I'll come back to you.

18 Mr Richter.

19 MR RICHTER: Just on that issue, Your Honour. I think the
20 letter ought to finish with the request to show cause as
21 to why proceedings should not be taken in relation to
22 breach of the suppression order and/or sub judice
23 contempt.

24 HIS HONOUR: Yes.

25 MR RICHTER: Because I think my learned friend will need to
26 consider what cause is shown as to whether or not to
27 proceed, I expect, because prima facie it's there.

28 HIS HONOUR: Yes, and they seem to be operating on a
29 misinformed basis that it's okay to print everything and
30 anything apart from the name of your client.

31 MR RICHTER: Yes.

1 HIS HONOUR: And that's not what my suppression order says.

2 MR RICHTER: No, and the name - - -

3 HIS HONOUR: My suppression order says "no information", and
4 that includes the conviction.

5 MR RICHTER: And the name would be immediately linked. I mean
6 if one looks at the front page of the Herald Sun,
7 I haven't seen it this morning but I saw it last night in
8 terms of the black page with "Censored".

9 HIS HONOUR: Yes.

10 MR RICHTER: Referring to a very prominent Australian figure,
11 the connection cannot fail to be made, as I am told it
12 was on Wikipedia last night, I haven't seen that but it
13 was apparently removed this morning, and so it really is
14 a matter for showing cause if there is one.

15 HIS HONOUR: Yes. All right.

16 MR RICHTER: That's as to that aspect of it, and it relates
17 also to some - a good deal of tweeting before verdict, so
18 it's not just what's happened in the last hours after
19 verdict, it's also preceding verdict.

20 HIS HONOUR: Yes, well it's an elevation to a point which it
21 wasn't at before.

22 MR RICHTER: Yes.

23 HIS HONOUR: It is a matter I will raise with the parties
24 tomorrow as well in a different context.

25 MR RICHTER: Yes.

26 HIS HONOUR: But the way I see it at the moment is that some of
27 the - by the way this transcript I intend to be
28 distributed to the media.

29 MR RICHTER: Yes.

30 HIS HONOUR: The way I see it at the moment is that some of
31 this publicity was designed to put improper pressure upon

1 me.

2 MR RICHTER: Yes.

3 HIS HONOUR: And, indeed, it is positively misleading because
4 it tells the community - I think one of the articles
5 tells the community that it's been challenged. Well,
6 I haven't heard - - -

7 MR RICHTER: I haven't.

8 HIS HONOUR: My order was never appealed.

9 MR RICHTER: No.

10 HIS HONOUR: I haven't heard the application for review or
11 revocation. Indeed, quite dishonestly these articles
12 refrain from informing their readers that there was no
13 opposition to the order being made in Victoria.

14 MR RICHTER: That's right.

15 HIS HONOUR: It is just breathtaking.

16 MR RICHTER: There are a few things I haven't said before, so
17 far as this trial is concerned, but - - -

18 HIS HONOUR: Yes. Anyway, you are supposed to leave the Bench
19 when you are angry but I'll stay for a bit longer to
20 finish this hearing off.

21 MR RICHTER: Yes, I suppressed my anger for this morning and
22 hope it will not return other than in a lucid form
23 tomorrow.

24 HIS HONOUR: Ms Judd has heard your suggestion, she will no
25 doubt give that consideration.

26 MR RICHTER: Yes. Thank you, Your Honour.

27 HIS HONOUR: I am not going to get involved in drafting her
28 correspondence. The whole point of Madam Director
29 bringing the proceedings, that she does so independently
30 of me, she gives independent consideration whether it is
31 me or another judge and it is brought in that way, so it

1 would be wrong for me to get involved in there.

2 MR RICHTER: Yes, Your Honour, so we will await the next

3 instalment.

4 HIS HONOUR: All right.

5 MS JUDD: I can indicate I am not going to include that type of

6 line in this letter.

7 HIS HONOUR: Right.

8 MS JUDD: This letter is done urgently.

9 HIS HONOUR: Yes.

10 MS JUDD: So as to try and limit the damage.

11 HIS HONOUR: Yes.

12 MS JUDD: I need to do some more work and I will take whatever

13 steps need to be taken.

14 HIS HONOUR: Yes.

15 MS JUDD: So that is one side. Now the only other matter that

16 I wanted to raise this morning was in relation to the

17 next trial.

18 HIS HONOUR: Yes.

19 MS JUDD: If Your Honour had any time to do that, I request

20 that the legal argument on the tendency be heard as soon

21 as possible. It should be of reasonably short duration.

22 HIS HONOUR: Yes.

23 MS JUDD: We would have written submissions. There were

24 written submissions - - -

25 HIS HONOUR: Filed.

26 MS JUDD: On this issue at the committal stage.

27 HIS HONOUR: No, I think some submissions have actually been

28 filed already in this trial, including an application for

29 a permanent stay, if I remember, on one of the

30 complainants.

31 MS JUDD: I think it is just flagged in the defence response,

1 Your Honour.

2 HIS HONOUR: It is just flagged, okay, all right.

3 MS JUDD: Rather than separate submissions.

4 HIS HONOUR: Okay, sorry, go on Ms Judd.

5 MS JUDD: But that it won't take us a great deal of time to get
6 written submissions ready.

7 HIS HONOUR: Yes.

8 MS JUDD: And obviously we can work back from whatever date
9 that Your Honour has, but I do urge Your Honour to hear
10 that sooner rather than later, and that is indeed
11 something that perhaps could be done before the sentence
12 hearing, if Your Honour had time.

13 HIS HONOUR: No, that's impossible - as in 4 February?

14 MS JUDD: Yes.

15 HIS HONOUR: No, that's just impossible.

16 MS JUDD: Well I thought I'd raise it, but that's okay.

17 HIS HONOUR: No, that's fine, it's just impossible. I'm not
18 here for a period in January and nothing will change
19 that. The sentencing hearing is on 4 February and that
20 will go ahead but I have to look at my dates for next
21 year. Because of the re-trial here I've got a number of
22 duties in this court and it's become somewhat
23 unmanageable, so I'm having to identify what I'm able to
24 do, if I'm able to do this. I was not proposing to
25 discuss that today because I am in the process of
26 examining that but I can say this, that at the very
27 least, if I retain this matter, I am not going to be able
28 to look at it until March, in terms of the pre-trial
29 argument.

30 MS JUDD: Yes.

31 HIS HONOUR: And the trial itself would have to come after

1 that, so there is going to be some delay in any event if
2 I retain the matter. That is just a consequence of
3 what's happened this year.

4 MS JUDD: I understand.

5 HIS HONOUR: I know there might be some inconvenience to the
6 parties but my intention was to raise this with you all
7 before the end of the year but I'm not quite there yet in
8 terms of my thinking, so this is perhaps a premature
9 discussion but at least you know where I'm headed with
10 that.

11 MS JUDD: Yes, thank you for that indication.

12 HIS HONOUR: All right. Mr Richter, did you have anything to
13 add to that?

14 MR RICHTER: No, Your Honour. It would be useful to us because
15 we'll be working on a number of fronts.

16 HIS HONOUR: Of course.

17 MR RICHTER: And it would be useful to us if we have written
18 submissions from the prosecution; we may be able to
19 answer them very quickly.

20 HIS HONOUR: Yes.

21 MR RICHTER: Just to get the matter ready and that would be
22 very useful. I should foreshadow that we do intend to
23 appeal, of course.

24 HIS HONOUR: Of course, I assumed as much.

25 MR RICHTER: The principal ground will be one of diversity and
26 unreasonableness but we will discuss that later when it
27 comes to sentencing.

28 HIS HONOUR: All right, well you've got plenty of work to do in
29 any event. All right, well I don't think there is
30 anything further that can be said today; in this sense
31 I'll hand this over to you, Ms Judd, for you to have the

1 carriage of these matters and give due consideration.
2 As to the question of which judge it goes before, I will
3 give some thought to that, whether it has to go before a
4 different judge. We are back on tomorrow then for the
5 application for variation, at 9.30.

6 MS JUDD: Yes.

7 HIS HONOUR: All right.

8 MS JUDD: I will try to get here for that, Your Honour.

9 HIS HONOUR: All right, that would be good. Is there anything
10 else we can deal with now? No, all right. Thanks very
11 much.

12 MR RICHTER: Thank you, Your Honour.

13 ADJOURNED UNTIL FRIDAY 14 DECEMBER 2018