The Queen v Wurramara [2011] NTSC 89

PARTIES:	THE QUEEN v WURRAMARA, Bronson
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	21103872
DELIVERED:	21 October 2011
HEARING DATES:	11 & 14 October 2011
JUDGMENT OF:	BLOKLAND J

CATCHWORDS:

CRIMINAL LAW – Application for permanent stay of proceedings – alternative application for temporary stay of proceedings – no suitable interpreter was available – was there a realistic expectation that an interpreter would be available within a reasonable time – crown did not object to bail – accused requires an interpreter in order to ensure a fair trial – jurisdiction to stay a criminal trial may be exercised – will it be impossible to give accused a fair trial - do proceedings offend the courts sense of justice and proprietary by being asked to try the accused in the circumstances – permanent stay is an extraordinary remedy – court must consider all reasonable options and procedures to correct unfairness before the stay will be granted – the interests of other parties other than the accused must also be considered – given seriousness of charges a further attempt to resolve the issue should be made – appropriate order is for

adjournment and bail at this stage – decline to make orders to permanently or temporarily stay proceedings.

Jago v District Court (NSW) (1989) 163 CLR 23; applied

Adamopoulos v Olympic Airways SA (1991) 25 NSW LR 75; followed

Dietrich v The Queen (1992-1993) 177 CLR 292; *Frank v Police* (2007) 175 A Crim R 592; *Perera v Minister for Immigration and Multicultural Affairs* [1999] 92 FCR 6; *R v Anunga and Ors; R v Wheeler and Ors* (1976) 11 ALR 412; *R v Watt* [2007] QCA 286; *Saraya* (1993) 70 A Crim R 515; referred to

Redressing the Imbalance Against Aboriginals in the Criminal Justice System, Mildren J, (1997) 21 Crim LJ 7.

Appeals on incompetent interpreting, Alejandra Hayes and Sandra Hale, (2010) 20 JJA 119 at 123.

Choo, Abuse of Process and Judicial Stays of Criminal Proceedings, (2008) OUP, 2nd ed at 18.

Rosemary Pattenden, Judicial Discretion and Criminal Litigation, 2nd ed at 111.

REPRESENTATION:

Counsel:

Appellant:	Mr Brock
Respondent:	Mr Stoddard

Solicitors:

Appellant:	North Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Wurramara [2011] NTSC 89
No. 21103872

BETWEEN:

The Queen
Appellant

AND:

Bronson Wurramara
Respondent

CORAM: BLOKLAND J

RULING ON APPLICATION TO STAY PROCEEDINGS
(Delivered 21 October 2011)

Introduction

[1] Bronson Wurramara was to stand trial for one count of aggravated assault and one count of attempt to have sexual intercourse without consent, knowing or being reckless as to the lack of consent. Both offences are alleged to have occurred on 31 January 2011; the same victim is alleged in relation to both offences. Mr Wurramara has been in custody since his arrest at that time.

[2] At various pre-trial mentions, counsel for Mr Wurramara indicated there had been problems locating an appropriately qualified interpreter to take further instructions from Mr Wurramara; to interpret the evidence of witnesses and

generally interpret the trial proceedings. Some interpreters who possess the relevant expertise were unwilling to be engaged for this particular trial.

[3] At the commencement of what was to be the voir dire hearing, Mr Brock, counsel for Mr Wurramara, advised the Court that despite serious efforts to engage one, an interpreter could not be found. Mr Brock applied to permanently stay the proceedings; alternatively to temporarily stay the proceedings on such terms as the Court saw fit. The grounds for the stay were that no suitable interpreter was available and there was no realistic expectation that an interpreter would be available within a reasonable time. It was submitted that consequently Mr Wurramara would not receive a fair trial.

[4] The Crown acknowledged the problem, accepting that no appropriate interpreter was available but argued the trial should be adjourned rather than proceedings stayed. In the circumstances the Crown indicated bail would not be opposed. I agreed to the course suggested by counsel for the Crown and declined to order a stay of proceedings. These are the reasons for refusing Mr Wurramara's application for a stay.

Efforts made to locate an appropriate interpreter

[5] It is not disputed Mr Wurramara speaks Anindilyakwa, a language spoken only on Groote Eylandt. Consequently, there are relatively few speakers of Anindilyakwa. Less still are those who could realistically interpret court proceedings.

[6] Mr Wurramara has a level of comprehension of spoken English that enables him to engage in simple conversation.

[7] Dr Marilyn McLellan, a linguist who assessed Mr Wurramara's capacity to use the English language and in particular to assess whether he requires an interpreter for court proceedings concluded that if conversation with Mr Wurramara takes on even the slightest complexity, he does not understand. Dr McLellan found that Mr Wurramara does not speak in Standard Australian English at all, neither does he speak a standard Kriol language. Dr McLellan concluded Mr Wurramara should have an interpreter, if he is to understand and take part in proceedings before the Court.[1]

[8] Not every attempt that has been made to secure the services of an interpreter will be covered in these reasons. I accept extensive efforts have been made. An outline of the history follows.

[9] Mr Brock, counsel for Mr Wurramara, first commenced trying to find an interpreter for Mr Wurramara on 2 February 2011 by attempting to engage an interpreter through the Aboriginal Interpreter Service (AIS). At a mention in the Magistrate's Court on 4 February 2011, Mr Wurramara was assisted by an interpreter provided by the AIS, Ms Cherelle Wurrawilya. It is unclear whether at a number of subsequent mentions and a bail application in the Court of Summary Jurisdiction an interpreter was present.

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1 Dr McLellan's report is Exhibit 3 in the stay proceedings.

[10] Mr Brock conducted a prison visit on 25 February 2011. An interpreter was requested but did not attend. When served with a brief of evidence for the committal, Mr Brock noted Ms Cherelle Wurrawilya had been the interpreter for the police record of interview with Mr Wurramara; given Ms Wurrawilya was a potential prosecution witness, Mr Brock noted she may not be appropriate to be an interpreter in the proceedings for Mr Wurramara. Exclusion of the police record of conversation with Mr Wurramara will be sought. Mr Brock requested a male interpreter for the oral committal. For a non-contentious mention in the Magistrate's Court, Ms Cherelle Wurrawilya was engaged as an interpreter, essentially because there was unlikely to be any conflict through a simple mention.

[11] Although arranged to interpret for a prison conference with counsel, a Ms Lalara did not attend as planned on 23 March 2011. Another interpreter was arranged for the conference and then declined to interpret once she was aware of Mr Wurramara's involvement.

[12] Although an interpreter was arranged, the interpreter did not present on 24 March 2011 at the Magistrates Court. A request was made for an interpreter to come from Groote Eylandt, for 25 March 2011 to commence the committal. The North Australian Aboriginal Justice Agency (NAAJA) indicated it was prepared to pay for the air fare. Mr Brock was then advised no interpreter was available.

[13] The oral committal was vacated and re-listed for 21 April 2011. No interpreter was available through the AIS for prison consultations prior to the new committal date. Although detailed efforts were made to find an interpreter, none could be found.

[14] Mr Brock was assisted at the committal and conferences by Mr Wurramara's brother, Mr Neil Mamarika. Mr Brock advised that Mr Mamarika did not interpret the proceedings or speak with Mr Wurramara during the committal. The difficulties with interpretation were discussed at committal in open court. The committal was adjourned to 4 May 2011. Further requests for an interpreter were made. On 5 May 2011, no interpreter was available for a conference at the prison. Further communication indicated no interpreter was available due to kinship issues; another interpreter who initially said she would interpret, subsequently declined. The AIS were unsuccessful in their efforts to contact other potential interpreters. Despite further attempts at booking the services of an interpreter, no interpreter was available for the committal on 24 May 2011. Mr Mamarika attended Court on 24 May 2011 in a support role as he still did not appear to be engaged in interpreting in any meaningful sense. This issue was raised in open court. Mr Wurramara was committed for trial. Throughout June 2011 no interpreter was available. This information was conveyed to Ms Musk of NAAJA who appeared at a pre-trial conference when the matter was listed for trial on 10 October 2011.

[15] At a later pre-trial mention before me on 18 June 2011, and referencing the Schedule 2 Form filed, the issue was identified as "Problems with

availability of interpreter in Anindilyakwa". From that time, various interpreters have initially agreed to complete "back translations"; attend psychologist's appointments for Mr Wurramara to be assessed and agreed to attend conferences with counsel. Those persons have subsequently either not attended or withdrawn their availability. This pattern has been ongoing.

[16] Mr Brock also contacted the Anindilyakwa Land Council to obtain advice about interpreters at Groote Eylandt. He was given the name of Cain Wurramara. It is possible that Cain Wurramara may not be appropriately qualified, however he is registered with the AIS. He is also related as a "cousin-brother" to Mr Wurramara. Cain Wurramara was engaged by the AIS to attend court for the trial, (at least the scheduled voir dire), however he did not catch the plane to Darwin as was required. The Court was told the AIS no longer wished to utilize him as one of their interpreters.

[17] A detailed affidavit of Ms Kelly McSkimming, the booking manager for AIS has been filed. Ms McSkimming confirms the many attempts made by AIS to secure an interpreter for Mr Wurramara without success. She has also explained that within AIS, only level 4 NAATI[2] interpreters are used for Supreme Court work. Interpreters may also refuse to undertake work if there is a conflict of interest or a cultural or kinship issue is apparent. Sexual matters may be a particular concern to interpreters and a number of interpreters are unwilling to interpret due to the nature of this case. No doubt these are the factors that underlie the problem of obtaining the

[2] National Accreditation Authority for Translators and Interpreters.

assistance of an interpreter in this case. It explains the pattern set out above of withdrawing or becoming unavailable. It is why, no doubt, Mr Brock earlier requested a male interpreter.

[18] Ms McSkimming advised that Cain Wurramara is a level 3 interpreter but is not NAATI accredited. He has no Supreme Court experience, however, he advised he was willing to interpret for Mr Wurramarra. As noted however, he did not fly to Darwin as arranged for the trial.

[19] I am well satisfied every effort was made by Mr Wurramara's legal representatives and by the AIS to secure an interpreter for the trial. It is unfortunate that despite exhaustive efforts, an interpreter has not been made available. The trial cannot proceed at this time. In my view however there should not be a stay. At this stage the matter should be adjourned to ensure every possibility concerning obtaining the services of an interpreter is examined.

Principles To Be Applied

[20] Mr Brock relies on the proposition there is no suitable interpreter available for Mr Wurramara's trial and there is no realistic expectation that an interpreter will be made available within a reasonable time period. Further, without an interpreter Mr Wurramara would not receive a fair trial.

[21] I agree the law acknowledges that a fair trial cannot be achieved unless an accused who does not have reasonable language competency in English has the assistance of an interpreter. In terms of an accused who does not have

reasonable English language competency, access to an interpreter will generally be required, not only for interpreting the evidence, but also interpreting the substance of the proceedings. Importantly an accused such as Mr Wurramara needs an interpreter to be able to instruct counsel, not only during the trial but in preparation for the trial. Counsel also require Mr Wurramara to be psychologically assessed. To be properly assessed Mr Wurramara will need an interpreter. I will discuss a number of authorities that have been raised on Mr Wurramara's behalf in support of a stay.

[22] On whether a particular accused requires an interpreter in order to ensure a fair trial is to be assessed with reference to the circumstances of the case and the background of the accused. This is the approach confirmed in *Adamopoulos v Olympic Airways SA*.[3] In the context of civil proceedings, Kirby P first acknowledged a general prima facie entitlement to an interpreter, however later applying these general principles determined there had been no miscarriage of justice in the circumstances of that case:[4]

> The mere fact that a person can sufficiently speak the English language to perform mundane or social tasks or even business obligations at the person's own pace does not necessarily mean that he or she is able to cope with the added stresses imposed by appearing as a witness in a court of law. Still more powerful are the reasons for affording a person the assistance of an interpreter if he or she must present the case without the help of legal counsel. Some of the earlier legal authorities about access to an interpreter reflect an attitude of a society, racially and linguistically homogeneous and often sympathetic to the problems of others struggling in an alien environment. It is typical of a country with poor skills in languages other than English that even educated judicial officers, sometimes

3 (1991) 25 NSW LR 75.
4 Above at 77.

> show an intolerance to the predicament of parties and witnesses whose first language is not English and who seek the provisions of an interpreter: see Professor R B Lea, *Widening Our Horizons* (1991) Canberra, AGPS. Those who, in formal public environments, of which courts are but one example, have struggled with their own imperfect command of foreign languages, will understand more readily the problem then presented. The words which come adequately in the relaxed environment of the supermarket disappear from recollection. The technical expressions cannot be recalled, if ever they were known. The difficulties cause panic. A relationship in which the speaker is in command (as when dealing with friends or purchasing or selling goods and services) is quite different from a potentially hostile environment of a courtroom. There, questions are asked by others, sometimes at a speed and in accents not fully understood.

[23] Kirby P however acknowledged a discretion is reserved to the trial judge to balance the inconvenience occasioned by a late application for an interpreter; to consider the possibility that the application has been made for extraneous or ulterior purposes; or to assess a particular case that an interpreter is not needed for the issues involved.

[24] None of those disentitling factors apply here.

[25] The circumstances leading to the conclusion that the appellant in *Adamopoulous* did not need an interpreter were that he had lived in Australia for 35 years; he had dealt with many people in the conduct of his travel business; many of those persons would have spoken English to him in the context of business dealings.

[26] Given the assessment by Dr McLellan, Mr Wurramara's circumstances are quite different to those considered in *Adamopoulos v Olympic Airways SA*.

[27] In discussing the contemporary content of a fair trial, Deane J in *Dietrich v The Queen*[5] said:

> If available interpreter facilities were withheld by the Government which were essential to enable the fair trial of an unrepresented person who could neither speak nor understand English, a trial judge would be entitled and obliged to postpone or stay the trial.

[28] Further, His Honour said that an appellate court would, in the absence of extraordinary circumstances, be entitled and obliged to quash any conviction entered after such an inherently unfair trial.

[29] It is a matter for the trial judge to determine whether an interpreter is required. This is usually non-contentious. The contemporary practice in the Northern Territory is that an accused who needs an interpreter does not face trial if an interpreter is not available to assist them. Most accused, like Mr Wurramara, are legally represented, unlike the circumstance considered by Deane J in *Dietrich*, whose comments were directed to unrepresented persons where interpreter services are withheld. Representation itself cannot effectively occur without an interpreter in these circumstances. One of the advantages of being represented is that counsel or in this instance NAAJA have been able to facilitate the provision of an interpreter. This is not a case where the state are withholding interpreter services from Mr Wurramara. It is a case where an interpreter cannot be found by virtue of the small number of appropriate interpreters that are available and qualified to interpret Anindilyakwa, with the added kinship and cultural pressures and

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5 (1992-1993) 177 CLR 292 at 331.

(related to that) an aversion by some interpreters to interpret in cases of alleged sexual assault. It is unclear given Ms Wirrawilya's previous involvement whether any cultural norms strictly operate to prohibit women interpreting for men as is sometimes the case; or whether it is the subject matter of the charges themselves that are the basis for the aversion. Either way, the current situation is that there is no interpreter available.

[30] I was told the complainant is from the Gunbalanya area. She speaks languages from that area and an interpreter will be provided for her assistance. As the language is not Anindilyakwa it is not a situation where one court interpreter could at least interpret the evidence into a language common to both the complainant and accused.

[31] There are parallels with the principles well established and developed from *R v Anunga and Ors; R v Wheeler and Ors*,[6] where the Court laid down judicial guidelines for police interviews with Aboriginal suspects. The guidelines apply so as to require an interpreter unless the Aboriginal person "is as fluent in English as the average white man of English descent". Mr Wurramara is obviously within that category and therefore it is unlikely a fair trial will be provided unless he has an interpreter.[7]

[32] In *Dietrich v The Queen*, Brennan J recognised article 14(3)(d) of the International Covenant on Civil and Political Rights, to which Australia is a

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6 (1976) 11 ALR 412.

7 For discussion of the issues associated with linguistic challenges for witnesses, accused and the Courts, see Mildren J, "Redressing the Imbalance Against Aboriginals in the Criminal Justice System" (1997) 21 Crim LJ 7.

party. Article 14(3)(d) provides as a minimum guarantee legal assistance to be assigned if the person does not have sufficient means to pay for it. Similarly, counsel for Mr Wurramara has drawn the Court's attention to Article 14(3)(f) of the ICCPR as part of the minimum guarantees in the determination of a criminal charge:

> To have the free assistance of an interpreter if he cannot understand or speak the language used in court ...

[33] It is accepted as recognised by Brennan J in *Dietrich*, that provisions of the ICCPR are not part of municipal law but are a legitimate influence on the development of the common law.[8] With the advent of the Aboriginal Interpreter Service in the Northern Territory and the development of professional interpreters of Aboriginal languages, contemporary practice and standards are in any event consistent with Article 14(3)(f) ICCPR, save of course the trial judge's discretion to determine the need for an interpreter as discussed in *Adampoloulos* (above). This is not the case to depart from the established standard.

[34] Some Anindilyakwa interpreters may not be at the level the AIS have determined are appropriate for interpreting in Supreme Court trials. Some language groups are so small however, it appears likely there would be very few interpreters at the NAATI recommended level for court interpreting. Nevertheless, accreditation by the Aboriginal Interpreter Service is a

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8 *Dietrich* at 321; Brennan J also referred to *Mabo v Queensland [No 2]* (1992), 175 CLR at 41-42.

reasonable starting point for gauging interpreter competence to interpret for an accused. The level of competency of the interpreter may also be linked to the complexity of the matters requiring interpreting. The level of complexity of the matters to be interpreted in the context of this trial have not been fully canvassed. I am aware the complainant will give evidence. I presume there will be police evidence. The evidence to be given does not appear to be overly complex.

[35] In the context of an application for judicial review of a decision of the Refugee Review Tribunal, the Federal Court in *Perera v Minister for Immigration and Multicultural Affairs* identified factors to be considered in assessing whether effective interpreting had been achieved.[9]

[36] Acknowledging there is rarely exact lexical correspondence, Kenny J acknowledged some interpretations "are better than others", but at the heart of the consideration is precision. Even if not of the highest standard, the interpretation must, in Her Honour's view "express in one language, as accurately as that language and the circumstances permit, the idea or concept as it has been expressed in the other language". Her Honour also discussed competency being assessed to ensure that communication is achieved and justice is seen to be done. In this matter, as with most Aboriginal languages, an exact lexical correspondence may not be possible, but an interpretation prioritizing the meaning or cross language equivalence is needed so that, as Kenny J expressed, communication is achieved.

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9 [1999] 92 FCR 6 at [28] – [29].

[37] In relation to the question of whether an interpretation had been competent, Her Honour noted that ordinarily such an assessment must rely on extrinsic considerations, for example the interpreter's oath, the interpreter's qualifications, any statement by the interpreter as to their capacity or experience, any indication from the interpreter or the witness that the interpretation is beyond the particular competence of the interpreter, and the course of the evidence, including its coherence and responsiveness of answers to questions asked. By responsiveness, I would caution that time may well be required to interpret the meaning through description rather than direct equivalence. Her Honour also acknowledged that some interpretation may be of a non verbal nature.

[38] Her Honour also acknowledged that in many cases the question of an interpreter's competence would be resolved by reference to their accreditation and certification by NAATI. With respect I agree with Her Honour's approach to these issues. The AIS Standards incorporating NAATI Standards are a starting point, however, it is for the Court to determine ultimately, and particularly if there is a dispute, whether the interpreter is qualified. Interpreters who are not accredited may need to be assessed, and if necessary evidence may need to be called on that point.[10]

[39] The advantage that a reviewing court rather than the trial court may have in relation to the competency of the interpretation is to consider evidence of an

[10] Rosemary Pattenden in "Judicial Discretion and Criminal Litigation", at 111, 2nd ed, says there is virtually no case-law on the credentials required of the interpreter. The learned author concludes "by analogy with the expert witness, the qualifications must be a matter for the Judge".

alternative interpretation of the proceedings, taken from the transcript. That is not possible in relation to assessing the competency of an interpreter for an accused given that most of the proceedings will concern evidence and procedures that do not involve the interpreter for the accused interpreting onto the record, but rather privately to the accused in the dock. It would only be if an accused chose to give evidence in a criminal trial that the competency of the interpretation could be assessed in that way. I acknowledge the submission that this requires greater care be taken in the selection of an interpreter for an accused.

[40] In relation to interpreters for Aboriginal people, McMurdo P and Wilson J in *R v Watt*,[11] considered the taking of evidence from a complainant through an interpreter of the Wik-Mungkan language. Similar challenges in relation to interpreters of Aboriginal languages as currently encountered in this matter were discussed. Justice Wilson, on the issue of flexibility to enable the trial to proceed and the issue of fair trial stated:[12]

> The unavailability of a person with that level of interpreting skill [NATI Level III] make the conduct of the trial problematic, and called for some flexibility on the part of all concerned, but ultimately, as counsel for the appellant submitted, trial procedures could not be relaxed to the point where the appellant was prejudiced.

[41] In *Saraya*[13] Badgery-Parker J confirmed the right of a person who is unable to adequately give evidence in the English language to an interpreter as an essential ingredient of a fair trial. Relying on *Dietrich*, His Honour said the

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11 [2007] QCA 286.
12 *R v Watt* (above) at [37].
13 (1993) 70 A Crim R 515.

trial would be unfair if an interpreter were not provided. His Honour went on to say "equally, it will be unfair if the interpreter lacks the skill and ability to translate accurately the questions asked by counsel and the answers given by the accused persons".[14]

[42] Counsel has also referred to research by the Aboriginal Resource and Development Services Inc (ARD's).[15] The authors make the point that:

> Legal Professionals would never think of sending a partially trained law student to run a complete Supreme Court trial, but this is essentially what is happening to Aboriginal interpreters working in the Courts.

[43] Alejandra Hayes and Sandra Hale in "Appeals on incompetent interpreting" consider the accreditation process for interpreters in the context of appeals that have been allowed on the basis of incompetent interpreting. The learned authors state:

> An interpreter may affirm or take an oath that they will interpret to the best of their ability; however, irrespective of their good will and intentions, if they do not have the required knowledge and skills, "the best of their ability" cannot guarantee that they will perform competently to a safe standard. Interpreters should always be required to state both relevant qualifications and accreditation details before the proceedings commence, not when a problem arises.[16]

[44] Further, counsel has provided the Court with the Australian Institute of Interpreters and Translators Inc. (Code of Ethics to guide interpreters

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14 *Saraya* (above) at 516.
15 "An Absence of Mutual Respect" at 31–35.
16 (2010) 20 JJA 119 at 123.

ensuring that their services are properly engaged). The Code of Ethics states:

> Interpreters and translators shall accept only interpreting and translation assignments which they are competent to perform ...

[45] These materials were drawn to the Court's attention to illustrate the point that there are likely to be few Anindilyakwa speakers or interpreters properly qualified and not conflicted.

Conclusions

[46] The jurisdiction to stay a criminal trial may be exercised in a wide variety of circumstances. It is acknowledged the Court has the jurisdiction to stay either because it will be impossible to give the accused a fair trial or because the proceedings offend the court's sense of justice and proprietary to be asked to try the accused in the circumstances of a particular case.[17]

[47] A permanent stay is however an extraordinary remedy. It is justified only after consideration of all other reasonable options and procedures. Other procedures must be considered inadequate to correct any unfairness before the stay will be granted.[18]

[48] Even a temporary stay has disadvantages, namely pejorative implications for the other party, here the Crown. Here the Crown are prepared to investigate other avenues to find an appropriate interpreter. Further, the implications of

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17 See generally the discussion in Choo, "Abuse of Process and Judicial Stays of Criminal Proceedings" (2008) OUP, 2nd Edition, general discussion Chapter 1, in particular at 18.

18 *Jago v District Court (NSW)* (1989) 163 CLR 23 at 31-32.

continuing either custody or bail are complicated by a temporary stay. No date for continuation of the proceedings need be fixed. The accused's obligations to the Court are not clear in the case of a temporary stay. The Crown have offered considerable assistance including undertaking further enquiries on Groote Eylandt with senior persons in the Aboriginal community; speaking to interpreters who may have initially expressed an aversion to interpreting in this case and following up on some of the potential interpreters that the AIS were unable to contact.

[49] On behalf of Mr Wurramara it was submitted that an adjournment, even if bail is granted, still poses risks and possible prejudice to him. Part of the prejudice asserted is the delay that will be experienced in attempting to find an appropriate interpreter when currently the potential is minimal. Although the delay is of concern, I would expect this trial to be able to proceed relatively early in 2012. Dates have been secured for the voir dire and any further argument required in relation to interpreters. In my view the Crown should be allowed an opportunity to examine the last of the possibilities available, even though I acknowledge the possibilities at this time appear bleak.

[50] The delay itself is not yet of the order that the Court should grant a stay. Indeed the Court is under an obligation to take all proper steps to ensure a fair trial to all parties.[19] I agree that the release of Mr Wurramara on bail

[19] *Jago* (above) generally.

does not necessarily counter all possible prejudice to him, however it removes a substantial point of prejudice.

[51] In *Frank v Police*,[20] Sulan J considered the response to circumstances where a fair trial (sentencing procedures) could not be achieved due to the lack of an appropriate interpreter and concluded:[21]

> The correct course was for the Magistrate to stay proceedings until an interpreter could be present. As an inherent power to stay proceedings which will result in an unfair trial ... A failure to afford a defendant an interpreter, in circumstances where the defendant cannot understand proceedings, will render proceedings unfair. If the court is unable to provide an interpreter and the defendant is, therefore, unable to receive a fair hearing the court possesses the power to stay the proceedings.

[52] The interests of parties other than the accused must also to be considered.[22] The charges are serious. Justice Sulan in *Frank v Police* was dealing with an assault police charge to be remitted to be dealt with summarily. In allowing the appeal and setting aside a sentence His Honour ordered re-sentencing be *adjourned* until an interpreter was available.

[53] Given the seriousness of these charges, it is important that a further attempt be made to resolve this issue. A formal stay places in doubt future dates and therefore, the question of bail and responsibilities of the accused to the Court, in circumstances where he faces serious charges. In my view the more appropriate order is for the adjournment and bail at this stage. This achieves much of what is sought on behalf of the accused.

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20 (2007) 175 A Crim R 592.
21 *Frank v Police* (above) at [68].
22 *Adamopoulos v Olympic Airways* (above), Mahoney JA at 81.

[54] The matter is re-listed for 13 February 2012. It is listed for three days for the voir dire proceedings. I understand both parties will continue to make efforts to secure an appropriate interpreter for those proceedings. If there is a challenge to any proposed interpreter's accreditation, I will be prepared to hear evidence about that on 13 February 2012.

[55] Dr McClellan indicated the accused also speaks Wubuy, a language spoken from the Numbulwar region. I was told there are no interpreters registered with the AIS who speak that language, however that too is a matter the Crown wish to consider or investigate and in my view should be given the opportunity to do that at this stage.

[56] For these reasons I declined to make orders either permanently or temporarily staying proceedings. As indicated on 10 October 2011, these reasons will be forwarded to the parties.

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