

10 November 2022 (Day 27)

CONTENTS

Housekeeping

Thursday, 10 November 2022
(10.30 am)

Housekeeping

(In the absence of the jury)

MR JUSTICE GOSS: Mr Johnson, Mr Myers, unfortunately a juror is unwell today and not in a fit state to travel to court, let alone to serve as a juror on this case. It's hard to anticipate whether that juror will be fit tomorrow, but I think the probability is that they will be.

MR JOHNSON: Yes.

MR JUSTICE GOSS: One never knows, given the nature of the problem. So obviously we can't do anything today.

MR JOHNSON: No.

MR JUSTICE GOSS: Then we'll presumably just have a full day tomorrow.

MR JOHNSON: Yes, or a fuller day. We'll certainly be able to deal with Doctors Bohin and Arthurs tomorrow, so hopefully by the end of business tomorrow we'll be in the position we would have been even had we sat today.

MR JUSTICE GOSS: In any even [sic], right.

MR MYERS: My Lord, I wonder once we've dealt with the jury, if I could just raise one issue with the defendant's position tomorrow and her attendance at court. Can I deal with that once we've dealt with the jury?

MR JUSTICE GOSS: Yes, we'll do that.

Jury in, please.

(In the presence of the jury)

MR JUSTICE GOSS: Good morning, members of the jury. You'll realise that one of your number is missing. Unfortunately, she's not well this morning, but I hope will be fit to continue tomorrow. So we can't, as I said to you at the very outset,

proceed unless all 12 jurors are here, so I'm afraid we just can't do anything today.

As I told you yesterday afternoon, it was going to be a half day today anyway and tomorrow was going to be a half day. Therefore assuming that she is fit to continue tomorrow, and we should know -- I hope we'll have a better indication by the end of today as to whether she is or not, so I'm going to ask you to phone in this afternoon to get an indication as to whether it's likely that you'll be required tomorrow, but I'm afraid nothing more today and it'll be a full day tomorrow, I hope, or a fuller day. It may not be a completely full day but it will be a fuller day. And we hope to be in the same position as we would have been at the end of tomorrow in any event. All right?

But this all depends on her being fit enough tomorrow. So I'm sorry, you're going to have to go. These things happen. As I say, if you phone in to the jury officer and then get a better indication, but you should expect to be required again tomorrow morning to continue. All right? Thank you very much. 10.30.

(In the absence of the jury)

MR JUSTICE GOSS: I don't know whether you know what the nature of the difficulty is, whether you've been told that or not.

MR JOHNSON: We have.

MR JUSTICE GOSS: I needn't make it public. But you're aware of what it is and that's why I'm expressing the hope and the reasonable confidence that it'll be resolved by tomorrow.

Yes, the position of the defendant.

MR MYERS: Yes. Ms Letby, as your Lordship knows, is anxious to be at court for this trial. That's her desire. As your Lordship knows also, it is a lengthy journey and necessarily, because of her position, there are various arrangements that have to be undertaken that add to the rigours of that, they take their toll, but that is being managed.

Her concern, expressed through me, is that to attend if there is not going to be a hearing increases on that burden. She's not being at all obstructive, but it's difficult. If we hear today that the juror is well and is going to attend --

MR JUSTICE GOSS: Well, is getting better and is likely to be fit tomorrow.

MR MYERS: Yes. If we hear that's the position then I anticipate Ms Letby would wish to be here if the trial is going to proceed.

The problem is if we hear nothing or if it really is very undecided as to the position of the juror, she would request, through me, that if at all possible her attendance be by the link on that occasion if that can be managed. It's not something she would wish to pursue generally, only in the circumstances where she may otherwise be facing quite a lengthy trip, but to no avail when she gets to court.

So I would be grateful if your Lordship assents to that in principle, that we can see what arrangements can be made to facilitate that in the event that we do not know that we are going to be able to sit tomorrow or there is a high degree of uncertainty.

MR JUSTICE GOSS: Right, thank you very much. I'll just ask Mr Johnson whether the prosecution have any view in relation to it. It's going to be expert evidence.

MR JOHNSON: Yes. Well, we have two concerns. We're starting from the proposition that Ms Letby is not waiving her right to be present. If she is present via a link then she must be able to be seen by the jury. Whether that is technologically possible when we are showing evidence through the screens, I have my doubts. So that's the first problem.

The second problem is that the workability or the viability of the link itself --

MR JUSTICE GOSS: I just don't know. This is just a theory.

MR JOHNSON: So if Ms Letby has not waived her right to be present, then if there is a breakdown in the link we will lose another day because she's not waived her right to be present.

MR JUSTICE GOSS: I think the situation must be, first of all, is it technically feasible, and if it's not, that then provides the answer. But if it is feasible, it would have to be known on what basis it's feasible and the extent to which, assuming she's not waiving her right to attend, that she can essentially be in attendance and by that it is meant visible.

MR JOHNSON: Yes. If she were waiving her right to be present if the link didn't work we'd have less of a concern, but that's not the position.

MR JUSTICE GOSS: No, all right.

MR MYERS: As to the first of those matters, my Lord, the technical viability of that, we can explore that in the time we have.

MR JUSTICE GOSS: Exactly.

MR MYERS: As to the second of them, of course we can take instructions on that, but it may well be the position is that knowing that there may be an issue with the link, if the defendant's position was that she wishes to attend but in the absence of a link operating, she understands that that effectively would be waiving her right to be here at that point. It may be that could be dealt with in that way. We could at least take instructions on that as to her position were she to be faced with a link that didn't work and we can relay that to the court.

If her position, of course, was, whatever happened, she wanted to be able to see the proceedings, it may well be the only guarantee to that would be to be here.

MR JUSTICE GOSS: Well, let's ascertain what the situation is so far as the technology is concerned.

MR MYERS: Yes.

MR JUSTICE GOSS: No decision will be made before 4 o'clock this afternoon in any event because by then there will have been further contact with the absent juror, who will either indicate she is improving or that she is not and there can be greater information gathered as to previous episodes and usual recovery time --

MR MYERS: Yes.

MR JUSTICE GOSS: -- so that we'll be in a much more informed position to know whether tomorrow's hearing is going to take place.

MR MYERS: I can see that, my Lord, thank you.

MR JUSTICE GOSS: Thank you very much. I'll be here all day, so if I'm needed I can come into court and deal with it.

MR JOHNSON: Does your Lordship want us to be at court all day?

MR JUSTICE GOSS: No. You can just liaise administratively.

MR JOHNSON: Thank you. And if necessary communicate by email?

MR JUSTICE GOSS: Exactly.

MR JOHNSON: Thank you.

MR MYERS: We'd simply ask, in conclusion, that Ms Letby be kept at court for the time being so we can meet with her after this hearing.

MR JUSTICE GOSS: Yes, certainly.

MR MYERS: Thank you, my Lord.

MR JUSTICE GOSS: Mr Myers is going to come down and see the defendant, so please don't take her away before he's had that opportunity to come down. I don't suppose there will be much delay, will there, Mr Myers?

MR MYERS: No, as soon as we've finished in court.

MR JUSTICE GOSS: He will be straight down. Thank you very much indeed.

Thank you.

(10.42 am)

(The court adjourned until 10.30 am on Friday, 11 November 2022)