

may not be appropriate to because one of the concerns obviously with a Black direction is that - - -

5 HER HONOUR: Compromise.

MR WHYBROW: - - - it might lead to people putting pressure on them to change their views when they are not voluntary, honest or genuine and in circumstances where they have diligently been working on this matter for a long time and the only note now is unable to agree and against a quite - - -

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HER HONOUR: Could I see the decision? Have you got a copy for me?

MR WHYBROW: Yes, I do and I apologise it is just got some writing all over it. It is M – for my friend's benefit it is The Queen v MB [2014] ACTSC 59. I have not written any words or anything on it. It is just various – I note in that judgment Refshauge J gave the Black direction but he goes through this type of issue.

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HER HONOUR: I will just read you the note, sorry. It says:

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The jury are unable to reach a unanimous verdict.

There is an additional piece of information in the note which I do not propose to share with you because it would breach the Juries Act. I do not understand paragraph 18, Mr Whybrow. Can you assist me? His Honour says:

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In this case ...

He is talking about - - -

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MR WHYBROW: It is very difficult to follow and it may even be an ex tempore, your Honour. I am – I apologise, I was having some trouble. It was more that – and I did not intend I would be handing that up to you at this stage.

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HER HONOUR: I mean, his Honour – I mean, what his Honour is referring to is vanilla Black territory. You want to make sure that they are told they have to remain true to their oath.

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MR WHYBROW: Yes.

HER HONOUR: You also want to tell them that experience has shown that sometimes if people calmly listen to each other's views they can reach a unanimous verdict.

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MR WHYBROW: Yes.

after examining one or more of you, that you are not likely to agree but I should only do' – well, sorry, 'but I should only do that if I am satisfied' and so on. You happy with that?

5 MR WHYBROW: Yes, your Honour.

HER HONOUR: Yes, could we have the jury, please.

10 **JURY RETURNED** [3.14 pm]

HER HONOUR: Thank you, members of the jury. You have told me in a note that you are unable to reach a unanimous verdict. I have the power to discharge you from giving a verdict but I should only do that if I am satisfied, after examining one or more of you, that you are not likely to agree and that means that there is no likelihood of genuine agreement after any further deliberation. Judges are usually reluctant to discharge a jury because experience has shown that juries can often agree if given more time to consider and discuss the issues.

But if after calmly considering the evidence and listening to the opinions of other jurors you cannot honestly agree with the conclusions of other jurors, you must give effect to your own view of the evidence. Each of you has taken an oath or affirmation to give a true verdict according to the evidence and as I told you yesterday morning, that is ultimately the only expectation of you and it is an important responsibility. You must fulfill it to the best of your ability. You each take into the jury room your individual experience and wisdom and you are expected to judge the evidence fairly and impartially in that light.

You also have a duty to listen carefully and objectively to the views of each and every one of your fellow jurors. You are all equals in the jury room. You should calmly weigh up one another's opinions about the evidence and test them by discussion. Calm and objective discussion of the evidence often leads to a better understanding of the differences of opinion which you may have and may convince you that your original opinion was wrong. That, of course, is not to suggest that you can, consistently with your oath or affirmation as a juror, join in a verdict if you do not honestly and genuinely think that it is the correct one.

I remind you of the direction I gave you in my summing up that your verdict, whether it be guilty or not guilty, must be a unanimous one and your note reflects the fact that you understand that. As all 12 of you must in the end agree upon that verdict, it may be that the particular paths which lead each of you to that unanimous decision are not quite the same but nevertheless your verdict of guilty or not guilty must be the verdict of you all. In other words,