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LAW REPORT OR LAW DIGEST PERMITTED**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI 2009-004-9598**

**THE QUEEN**

v

**JAN ANTOLIK (AKA KAREL SROUBEK)  
CLYDE ANTHONY COWLEY  
ADAM CHARLES RILEY AND  
JASON SIISIALAFIA SUTTIE**

Hearing: 26 July 2010

Appearances: J Jelas for the Crown  
S Lance for Mr Antolik  
P Wicks for Mr Cowley  
E Leary for Mr Riley  
DPH Jones QC for Mr Suttie

Judgment: 26 July 2010 at 6:00 p.m.

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**JUDGMENT OF BREWER J**

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*This judgment was delivered by me on 26 July 2010 at 6:00 p.m.  
pursuant to r 11.5 of the High Court Rules 1985.*

*Registrar/Deputy Registrar*

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Solicitors / Counsel:  
Ms J Jelas, Meredith Connell, Office of the Crown Solicitor, Auckland  
Mr S Lance, Barrister, Auckland  
Mr P Wicks, Barrister, Auckland  
Mr E Leary, Barrister, Auckland  
Mr DPH Jones QC, Barrister, Auckland

[1] The accused are jointly indicted on one count of aggravated robbery and one count of blackmail. The complainant in each count being Mr Gallia.

[2] The case was set down to commence trial by jury on 26 July 2010. On 19 July 2010 the Crown filed an application for a direction that Mr Gallia give evidence in an alternative way, namely by video link from an appropriate place outside the courtroom. On 23 July 2010 the Crown filed an amended application which added a further ground on which the direction is sought.

[3] This morning I empanelled the jury and then sent it away until 10:00 a.m. tomorrow (Tuesday, 27 July 2010) so that I could hear argument on the Crown's application. At the request of defence counsel the Crown provided Detective Constable Aho for cross-examination (he having filed an affidavit in support of the Crown's application).

[4] The grounds on which the direction is sought are:

- a) the witness's fear of intimidation;
- b) the need to minimise the stress on the witness; and
- c) to ensure the safety of the witness.

[5] The general background to this case as set out in the brief of evidence of Mr Gallia is as follows:

- a) Mr Gallia was engaged by Mr Antolik to set up a cannabis growing operation. In June 2008 the Police discovered the operation and arrested Mr Gallia.
- b) Mr Antolik provided \$12,000 so that Mr Gallia and another man could pay for a defence lawyer. Subsequently Mr Antolik demanded the repayment of that money and also compensation for the loss of the cannabis operation.

- c) The relationship between Mr Gallia and Mr Antolik deteriorated to the point where on 20 December 2008, when the two met to discuss the situation, Mr Antolik assaulted Mr Gallia, punching him in the eye and kicking him on the ground. Mr Gallia made a complaint to the Police and says that subsequently he received threats by texts from a cellphone – the number of which was unknown to him. These threats apparently extended to his wife and child and Mr Gallia states that he believed they implied the involvement of the Hells Angels gang. As a result on 6 January 2009 he withdrew the complaint against Mr Antolik.
- d) The relationship with Mr Antolik was salvaged to an extent through the mediation of Mr Suttie who brokered an agreement by which Mr Gallia would pay money to Mr Antolik. Mr Cowley was involved in the discussion and it was agreed that he would collect the payments, keep records of it, and hand the money over to Mr Antolik.
- e) Disagreements arose over the payment of money and Mr Gallia decided that he needed Mr Suttie's assistance again. Mr Gallia arranged to meet Mr Suttie at Mr Suttie's house on 26 March 2009. However, when Mr Gallia went to the house all four accused were present and together they assaulted him for some time and threatened him with a knife. They extorted from him his wrist watch and his partner's Volkswagen motorcar. The four accused then let him go, having made it clear that he still had to pay more money or face further consequences.

[6] After this incident Mr Gallia went to the Police and he and his family were placed in the witness protection program. Even so, Mr Gallia says that two anonymous threats were made to his immediate family after he had made his complaint to the Police. Those threats were apparently received by Mr Gallia's eldest child who lives with Mr Gallia's mother.

[7] As a result of this Mr Gallia deposes:

1.1 ... the four accused are known to me. I am fearful and intimidated at the prospect of giving evidence in person at the pending trial because of the likelihood of my safety or that of my family being place at risk. My fear is based upon:

- (a) Past intimidating behaviour and threats made to me;
- (b) The association all of the accused have to criminal organisations that are known to use violence and intimidation;
- (c) The intimidating and threatening nature of the offending;
- (d) Threats made following my complaint to the Police in respect of the present charges the accused are about to stand trial on.

[8] Mr Gallis says further:

1.4 I would prefer to give evidence by way of a video monitor from another location. I believe that the process of giving evidence would be far less stressful for me if I am not personally present in the courtroom.

[9] The four accused are all known to Mr Gallia. Mr Antolik (also known as Karel Sroubek) is from the Czech Republic. He is apparently wanted by the Czech authorities on a charge of violence. He also faces charges in New Zealand relating to the manner in which he came to New Zealand. He has been in New Zealand since 2005 and has no record of offending here.

[10] The accused Mr Cowley has no criminal history record but is apparently a prospect for the Hells Angels gang.

[11] Mr Riley has a criminal history record including two convictions for violence; one being a conviction for wounding with intent to cause grievous bodily harm which occurred in October 2001 and for which he was sentenced to five years imprisonment, and the other being a 19 March 2009 conviction for assaulting a taxi driver for which he was fined \$1,500. Mr Riley is a patched member of the Hells Angels and holds the position of sergeant-at-arms.

[12] Mr Suttie has a conviction for violence dating from 1994 for which he received a suspended sentence for two years coupled with a reparation order.

[13] The Evidence Act 2006 (“the Act”) provides for modes of giving evidence. Section 83 provides that the ordinary way for a witness to give evidence is orally in a courtroom. However, a Judge may direct that a witness give evidence-in-chief and be cross-examined in an alternative way pursuant to ss 103 and 105 of the Act.

[14] Section 103(3) sets out the grounds for giving such a direction. These include the witness’s fear of intimidation, the nature of the proceeding, the relationship of the witness to any party to the proceeding and any other ground likely to promote the purpose of the Act.

[15] Section 103(4) of the Act provides:

- (4) In giving directions under subsection (1), the Judge must have regard to—
  - (a) the need to ensure—
    - (i) the fairness of the proceeding; and
    - (ii) in a criminal proceeding, that there is a fair trial; and
  - (b) the views of the witness and—
    - (i) the need to minimise the stress on the witness; and
    - (ii) in a criminal proceeding, the need to promote the recovery of a complainant from the alleged offence; and
  - (c) any other factor that is relevant to the just determination of the proceeding.

[16] Section 105 of the Act sets out alternative ways of giving evidence. They include giving evidence from an appropriate place outside the courtroom.

[17] Ms Jelas, for the Crown, placed particular emphasis on the need to ensure the personal safety of Mr Gallia. She pointed to four aspects of the case:

- a) The first is that some accused have a history of violence and are directly associated with a criminal organisation, namely the Hells Angels gang.

- b) The second factor is the incident itself. Ms Jelas points to Mr Riley's presence at the incident submitting that this was a new development and that he was only there for intimidatory and threatening purposes. Violence was inflicted on Mr Gallia by all four accused and serious threats were made.
- c) The third factor Ms Jelas points to is that after Mr Gallia made his complaint to the Police a threatening letter and a text were received by his son.
- d) The fourth factor is that threats made to Mr Gallia by text messages came from a phone found in a room associated with Mr Riley.

[18] Ms Jelas says that if the Crown's application is declined there will be application made for several armed police officers to be present in the court when Mr Gallia gives his evidence, so seriously is the threat to his safety regarded.

[19] The other two grounds for the application, namely Mr Gallia's fear of intimidation and the need to minimise his stress, are linked with the safety ground.

[20] All four defence counsel opposed the Crown's application. Mr Jones QC, for Mr Suttie, and Mr Wicks, for Mr Cowley, filed written submissions. I summarise broadly the defence submissions as follows:

- a) Mr Gallia is a mature adult who is experienced and proficient in martial arts. All four accused were known to him prior to the incident and there is no real prospect of them intimidating him in the court setting.
- b) None of the accused have the sorts of criminal backgrounds which would give rise to serious concerns for Mr Gallia's safety. Indeed, the incident from which the charges in the indictment are drawn amounted to a "roughing up" and there is no evidence of any medical treatment being given to Mr Gallia as a result of the incident.

- c) The Evidence Act 2006 sets out the ordinary mode of evidence. Mr Gallia's credibility is the crucial issue in the trial and having him give his evidence in court in the ordinary way is desirable in the interests of justice.
- d) Counsel acknowledged that Mr Gallia is apprehensive, or fearful, of giving evidence but submit that that is to be expected in a case of this nature. He might prefer an alternative way of giving evidence but preference is not enough to displace the ordinary course.

[21] The Act prescribes the ordinary mode of trial and in my view should not be departed from unless there is good reason in terms of s 103 of the Act. All trials are stressful for complainants regardless of the method by which they give their evidence. And in a trial involving a falling out between people involved in criminal activity there will naturally be a preference on the part of a complainant not to give evidence in person in the presence of the accused.

[22] I have looked at recent case law in this area and in particular *R v Williams and Williams*<sup>1</sup> and I accept that the established alternative methods of giving evidence prescribed by s 105 do not of themselves significantly disadvantage an accused.

[23] However, this case seems to me to fit well within the range of cases where violence allegedly occurred between persons involved in lower level criminal offending. There is no evidence that the accused, or any of them, poses a direct threat to the safety of the complainant, Mr Gallia.

[24] I accept that threats against Mr Gallia and his family form part of the matrix of this case but I see no evidence that they would be given effect to in the courtroom. I am informed that the Hells Angels gang is a criminal organisation but that by itself does not justify a departure from the ordinary method of trial. Mr Gallia would obviously prefer to give evidence via video link but the law does not accord preference a determinative role.

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<sup>1</sup> *R v Williams and Williams* HC Auckland, CRI 2007-092-10225, 16 December 2009, Heath J.

[25] I am satisfied that a proper screening of the public and proper management of security inside the court will be sufficient to answer the Crown's concerns.

[26] The application is denied.

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Brewer J