

**IN THE DISTRICT COURT
AT NELSON**

**CRI-2016-042-001439
[2017] NZDC 16021**

THE QUEEN

v

OLIVER HAYES

Date of Ruling: 21 July 2017
Appearances: J R T Crawford for the Crown
M J Vesty for the Defendant
Judgment: 21 July 2017

PRE-TRIAL RULING OF JUDGE D C RUTH

[1] The Crown makes application pursuant to s 103 Evidence Act 2006 for an order that [the complainant] be able to give his evidence by AVL connection in the forthcoming trial. That application is opposed by the defence.

[2] The defendant faces a number of charges including assaults in various ways on [the complainant].

[3] At the present time the defendant is on remand at the Christchurch Prison and [the complainant] is a sentenced prisoner. He is also an inmate at the Christchurch Prison.

[4] The basis of the Crown application centres around the practicalities which will arise if the complainant/witness has to come to Nelson. The Crown refers the Court

to a significant risk of intimidation and stress given the complainant/witness' position in the trial and given that in light of the travel arrangements between Christchurch and Nelson it is highly likely that they would have to travel in the same vehicle.

[5] Another consequence of the trial being in Nelson rather than Christchurch is that the transport arrangements arise only on a Wednesday and so it is likely that both the defendant and the complainant/witness would have to be housed in Nelson cells. The only possible alternative would be for the complainant/witness to be housed in Blenheim. That will have its own logistical problems and expenses.

[6] Mr Vesty, for the defence, in opposition queries whether there was a case made out, having regard to the provisions of s 103(3)(a) to (j) inclusive for the Court to make such an order. At the time Mr Vesty made that submission there was unfortunately no indication from the complainant/witness as to his view of the matter.

[7] In discussion with Mr Vesty I indicated to him that given the purpose behind this legislation and the need to ensure that the most effective measures are put in place for obtaining the best evidence, that there was a residual discretion in s 103(3)(j) that would enable me, even in the absence of material from the complainant/witness, to make the orders sought. Mr Vesty did not, in the course of his submissions, raise matters of prejudice to his client.

[8] As a result of the discussions between counsel and having raised the absence of any material from the complainant/witness with Ms Crawford, for the Crown, it was agreed that the matter should be adjourned until later in the day pending receipt of such information. The Court was aware that this would entail a police officer visiting the complainant/witness at the prison and ascertaining his views for such a communication to the Crown, the defence and of course the Court.

[9] I am aware that Mr Vesty, on behalf of the defendant, has had the opportunity to see and consider the information given from the complainant/witness and while not resiling from his opposition to the order sought has agreed that the matter might be dealt with on the papers. In that regard I record that neither Mr Vesty nor Ms Crawford are now present.

[10] The views of the complainant/witness have been recorded in a police job sheet which indicates that today at nine minutes past 11.00 am Rolleston Prison was contacted with a view to a police officer going to speak with [the complainant].

[11] The police officer also made some inquiries confirming the logistical difficulties around the transport arrangements. I make it clear that those are not the prime basis for the decision I have made.

[12] The discussion between the police officer and [the complainant] is recorded in the police job sheet and for convenience I repeat it here:

I would far, far prefer to do this via AVL from here. I believe it would be a huge conflict of interest for me to travel to Nelson. I feel very uncomfortable about travelling to Nelson in the same van as Hayes and in fact I would be in the Nelson cells all week. My concern not only relates to Hayes but also to other prisoners, those travelling in the same van, those in my unit where I am currently and those in the cells in Nelson. What do I tell them? That I am going to Nelson for a week. They will all know why and this would be hugely compromising for me in this environment. I even have to be very careful about giving evidence via AVL as everyone talks and I will be seen to be a nark. At least if I didn't have to travel the risks would be lessened for me.

[13] This brings the matter then within the provisions of s 103(3)(c), (d), (g) and indeed (h). These subsections talk about trauma to the witness, his fear of intimidation, the nature of the evidence likely to be given, and the relationship between the witness and the defendant.

[14] In the circumstances outlined in the job sheet I come to the view that the requirements of the Act are satisfied and that there will be an order that the complainant/witness give his evidence via AVL connection.

D C Ruth
District Court Judge