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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 268 of 2003

THE DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

GWENDOLINE DEEMAL-HALL Respondent

CAIRNS

..DATE 09/07/2003

JUDGMENT

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HIS HONOUR: This is an application by the Director of Public Prosecutions for the revocation of a bail order made by Justice Holmes on the 30th of January 2003.

The respondent is charged with the murder on the 13th of January 2003 of Kalman John Toth. She is also charged with robbery in company. The committal hearing for those charges is set for a date in November of 2003.

The basis of the application is that the respondent is in breach of one of the bail conditions, namely that she should not have contact with Crown witnesses. One such Crown witness is a Mr Alan Massey who would give evidence at the trial to the effect that the respondent was at Mareeba at the time of the alleged offence. So, his evidence is of a circumstantial kind.

The respondent is alleged to have had contact with the witness Massey and worse than that the allegation is that on the evening of the 2nd of June 2003 she attempted to kill him by administering a stupefying drug.

The Director of Public Prosecutions has raised the prospect that the respondent may be charged with attempted murder or at least with the offence of administering a stupefying drug.

The respondent admits that there has been contact with the witness Massey on diverse occasions. This I find has been, in the main, at the instigation of Massey himself. The first

contact was made by Massey on the 4th of February 2003 soon after bail was granted. It prompted a perfectly correct response from the respondent's solicitors, namely the contact with the police and the then delivery of a letter to the investigating police officer dated the 6th of February 2003 confirming the conversation and confirming also the statement that the investigating officer: "Informed (Massey) of the no contact provision and warned him not to have any contact with (the respondent)".

Since then the police officers have been aware of other occasions of contact of the respondent by Mr Massey. They warned him not to do it but it continued. In evidence before me Mr Massey admitted to some 20 to 30 occasions in which he had telephone contact with the respondent since February 2002.

The respondent, I find, did her best to discourage him from making such contact. Family members were told not to take his calls. Mr Massey continued to contact the respondent even since the institution of this proceeding. He did so on the 1st of July 2003 when he made the comment to the respondent that "You won't be able to talk to me when your bail is revoked will you?" Again last evening he attempted contact with the respondent.

Mr Massey is quite aware that it was wrong of him to do so. I expect that he has been cautioned by the police and other persons who have prepared the material for this application that he should not do so. But whether this is so or not he is

aware that he is doing the wrong thing, that he is breaching the law yet he continues to infringe.

Two letters that he wrote to the respondent dated the 11th of February 2003 (Exhibit GDH1) and 23rd of February 2003 (GDH2) have been placed in evidence. The first of those letters contains a statement from Mr Massey: "I will not pester you again" but it is clear enough on the evidence that that statement had no such intent.

These letters demonstrate Mr Massey's obsession with the respondent and his continuing desire to have close contact with her and other evidence demonstrates his religious fanaticism which has caused him to suggest on occasion that the respondent needs to be "cleansed" or "redeemed".

I am not convinced that Mr Massey would refrain from initiating further contact with the respondent unless he is formally restrained from doing so or dealt with by the police for his breach of the law.

The allegations that the respondent administered a stupefying drug on the evening of the 2nd of June 2003 is denied by her. She states that she did not visit Mr Massey's home on that day or on any other day. She called to give evidence Mr Lucas, a neighbour, who said that she was in contact with him at Cooktown at approximately 4 p.m. on the afternoon of that day.

I accept the evidence of Mr Lucas as being reliable. That would mean that the respondent could not have been at Mr Massey's residence at 6.45 p.m., the time at which he said the contact occurred. The prospect remains that she could have been there later in that evening, but it gives concern about the reliability of Mr Massey's evidence.

The allegation of the administration of a stupefying drug is based on a number of circumstances, some of which were only ascertained last week. Mr Massey alleges that he was told by the respondent that she was giving him a bush remedy, a substance with aphrodisiac properties. It was to be added to some yoghurt which he had at his home. Despite his undoubted interest in that product, he did not see the respondent place the substance in the food.

After consuming the food, however, he alleges he became dizzy and fell into a deep sleep. When he awoke it was Wednesday morning. He had defecated and urinated in his clothes and generally made a mess on the sofa onto which he had collapsed. He called the police at about 8 a.m. that morning. He also called the respondent and, according to him, he was reassured by her that the substance did have an adverse effect on some people.

The response of the police is indicative of their attitude to Mr Massey and to the respondent. Despite being made aware of the claim of the administration of a substance which caused Mr Massey to be unconscious for some 36 hours, no investigation

was made into the complaint, apart from suggesting that Mr Massey undertake a blood and urine test. Instead, the police officers went to Cairns to collect a pretext phone to record a phone conversation which they proposed to initiate between the respondent and Mr Massey. The purpose of that conversation, I infer, was to trap the respondent into having a communication with a Crown witness and, thus, provide evidence of a breach of the bail condition.

That conversation was recorded, but did not reveal any statement conclusive of the respondent's involvement of administering the stupefying drug. There was certainly discussion about the use of a substance, but it was consistent with having had an earlier discussion about the topic of bush remedies.

The blood and urine test results were received only last week. These showed that the samples taken on the afternoon of the 4th of June 2003 still had a significant quantity of the metabolites of the drug Temazepam and some Zoloft. If that quantity of Temazepam was just the remnant of a dose administered on the evening of the 2nd of June 2003, then that dose was likely to have been within a lethal range.

Another circumstance of importance is the fact that the respondent did have prescribed to her quantities of those two drugs at earlier times. The records of the Endeavour Pharmacy at Cooktown do show that the respondent received some 25 Temazepam tablets on the 7th of March 2003, and another

prescription, again of 25 tablets, two months later on the 23rd of May 2003. There was one prescription of Zoloft on the 7th of March 2003 also. (See Exhibit IBS 8.)

A number of conclusions can be drawn from these circumstances and it is not for me to resolve any of these conflicts in evidence. The allegation which is made, based on those circumstances, is a very serious one, and one about which I would have to be satisfied to at least a Brigginshaw standard, before I would act upon it.

To date, no charge has been laid by the Director of Public Prosecutions in respect of that alleged conduct. Counsel for the parties, however, have indicated that these matters should be taken into account by me, rather than facing the prospect of - if a charge is laid in the future - the question of bail being referred to me again when it would inevitably be refused by a Magistrate before whom the charge would be first returned.

In this application, being one for revocation of bail, it is the applicant, the Director of Public Prosecutions, that has the onus of persuading me that the application should be granted. The position that the applicant finds itself is its reliance upon the evidence of Mr Massey in the main, together with those circumstances to which I have made only passing reference.

I did not find Mr Massey a witness on whom I could rely in order to be convinced to the standard which I have indicated for the purpose of this application. I indicate that I did accept the evidence of Mr Lucas. The respondent herself did not give evidence, but certain matters were admitted, consequent upon agreement between counsel, which I have taken into account also.

In all the circumstances I am satisfied that the contact that has been had between the respondent and Mr Massey in contravention of the bail conditions has been as a consequence of the conduct of Mr Massey.

I am satisfied that the respondent did not herself encourage that approach and indeed has done what is reasonably expected to discourage it.

I am not satisfied on the evidence of Mr Massey about other matters to convince me that bail should be revoked in the circumstances of this case. The learned Crown Prosecutor has indicated that the allegations of Mr Massey are subject to further investigation and whilst there is agreement between the parties that there would not be a further application for revocation of bail, I would assume that agreement is not so tight that, if conclusive evidence is found upon which such a charge could be based, there might not be an application in the future. I do not seek to anticipate that. I am simply deciding on the evidence before me at this stage and it is to the effect that I am not satisfied in all the circumstances and in the interests of justice (as that term has been broadly defined, particularly in the case of Baytieh versus the State of Queensland 2001, 1 Queensland Reports 1) that bail should be revoked. I dismiss the application.
