QUEENSLAND COURTS

QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

GARDINER, Magistrate

[redacted]

THE CROWN — **Complainant**

and

[redacted] — **Defendant**

BRISBANE

[redacted]

DAY 1

DECISION

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application for bail by [redacted], who is charged with an accessory after the fact of murder, and attempted corruption of a witness, 17 perjury charges and two other offences involving common assault and deprivation of liberty. The allegation of accessory after the fact of murder relates to conduct back in 2009. He would be prima facie entitled to bail, but for the fact that, back in 2009, he – when the offence is alleged to have occurred, he was on bail for affray, which puts him in a show cause situation. The affray charge was eventually dealt with, and the defendant was convicted and fined $500, back in October 2009.

That show cause situation means that this court should refuse bail, unless he is – he can show cause as to why his detention in custody is not justified. The applicant, [redacted], has sought to show cause, on the basis that he has strong ties to the Gold Coast community, and Mr McMillian has pointed to what he submits are various witnesses in the Crown case, in respect of the charges.

The prosecution, in their outline of submissions, relies upon two issues as to being relevant to whether he has shown cause, one of the risk of committing further offences, and secondly, of interfering with witnesses or otherwise obstructing justice. The prosecution notes that – in paragraph 31 of their outline:

> *By virtue of the fact that the applicant's in a show cause position, the court must consider whether he's an unacceptable risk, or whether the imposition of conditions can ameliorate that risk to a no longer unacceptable level.*

In respect of the issue as to the risks imposed to others, the prosecution submits at paragraph 34 that:

> *It might be that a condition stipulating that he only have access to one phone with no encryption applications could give police the power to monitor who he has contact with, and should he be found in possession of a second communication device, or should he use a second communication device, he would be in breach of his bail.*

In addressing the risk of interfering with witnesses, the prosecution outline at paragraph 36 provides:

> *The court may conclude at a string of conditions, including no contact with relevant Crown witnesses, would ameliorate this risk to a no longer unacceptable level.*

Ultimately, the Crown noted at paragraph 38 that:

> *The applicant must show cause to demonstrate that his continued detention is no longer justified.*

And at paragraph 39, the Crown submitted that:

> *The court may find that that course has been shown through a*

myriad of factors, combined with stringent conditions. And if – should the court be satisfied that cause has been shown, the Crown would seek conditions be imposed in accordance with the Crown's draft order.

I have had regard to the draft order of the Crown. It does impose stringent conditions, which I am satisfied would ameliorate the risk to a sufficient level, that the defendant's continued detention would no longer be justified.

Those conditions, upon which the defendant will be admitted to bail, are that he must appear and surrender at the Brisbane Magistrates Court next [redacted] or any other date as stated by the Brisbane Magistrates Court. If the charge against him is committed to a higher court, he must appear at that court, at that time and date, as specified. He must not depart from the court without leave of the court. He must return to the court, at all times determined by the court. He is to live at [redacted]. He cannot leave – live at an – another address until, before he moves to the other address, he has the written permission of the Director of Public Prosecutions.

He is to be on a curfew between 9 pm and 6 am, unless he has the written consent of the Director of Public Prosecutions to do otherwise. He must present himself to the court – to the door of the house during those times, to a police officer, when asked to do so. He is to report to the officer in charge of the Broadbeach Police Station between 8 am and 8 pm every day, commencing the day of his release from custody, unless he has written permission from the Director of Public Prosecutions to report otherwise on another day or at another time, or to another station.

He must not contact or communicate with or attempt to contact or communicate with, directly or indirectly, [redacted], or any other non-police Crown witness. He must not contact or communicate with or attempt to contact or communicate with, either directly or indirectly, any person that he knows or ought reasonably suspect to be a member or associate, or otherwise affiliated with an [redacted]. And the person, [redacted], or [redacted]. He must not contact or communicate with or attempt to contact or communicate with, directly or indirectly, [redacted], [redacted], [redacted] or [redacted].

He must not possess a weapon. He must not use or possess illegal drugs. He must partake in drug testing, required by police by providing a sample of his saliva, urine or blood, when required to do so. If he is required to take part in drug testing, he is to provide the results to the officer in charge – – –

MR McMILLIAN: Should be Broadbeach Police Station.

HIS HONOUR: – – – of the Broadbeach Police Station. For the Office of the Director of Public Prosecutions, he is to pay for the costs of any of that, and provide copies of the results to the officer in charge of the Broadbeach Police Station, upon request from a police officer or representative of the DPP.

Prior to his release from custody, he must surrender a passport, if held by him, to the Registrar of the Magistrates Court at Brisbane. If at any time before or after he is released, he can be called upon to sign any necessary documentations, in relation to the police retaining or obtaining that passport, if it exists. He must not apply for a passport whilst he is on bail. He must not leave or attempt to leave Australia. He must not enter or attempt to enter any international airport or point of departure. He must not leave Queensland unless he has the prior written consent of the Office of the Director of Public Prosecutions.

He must possess only one mobile phone when on bail for these offences. Within two business days of his release or within two business days of obtaining a mobile phone, he must provide all identifying information, which includes but is not limited to the contact number, make, model, service provider, and IMEI number, to the officer in charge of the reporting station, or when requested by a police officer who holds the rank of sergeant or equivalent, or higher. He must not have any encryption applications installed on the phone, as per the draft order, and when requested by an officer in charge of the reporting station, he must hand over the mobile phone and provide the password – passcodes and passwords, or pin numbers, to the device and any applications installed on the device.

In my view, the risks associated with his release on bail can be ameliorated to an acceptable level, by the imposition of the above stringent conditions. Hence, he has demonstrated, in my view, that his continued detention, based upon the amelioration of the risk with those conditions, is no longer justified.

Now, the prosecution have sought an order under section 12 of the Bail Act to prohibit publications or representations made on the order – sorry, made in court today. I decline to make that order. In my view, these proceedings should be as open as possible, however, there was discussion in the application in respect of two persons who – whose identity is not public, and I am satisfied – I should have asked you, Mr McMillian, whether you consent to this order or – – –

MR McMILLIAN: Yes, I have no objection.

HIS HONOUR: Sorry?

MR McMILLIAN: I have no objection to the amended version.

HIS HONOUR: Yes. Both parties consent to an order, and in my view, it is appropriate to confine the order to these terms. The information published and representations made by and on behalf of either of the parties, in relation to the identity of [redacted] and [redacted], shall not be published by any means. If an examination of witnesses, in relation to an indictable offence, is held before the applicant is discharged, or if the applicant is tried or committed for trial before the trial has ended, I will make that order on that limited basis. Is there any other order that either of you were seeking?

[redacted]: Your Honour adjourned this matter to the [redacted] I think that it should be the [redacted]. That's next Monday, the committal callover.

HIS HONOUR: Thank you. That is correct. Is there any other order that you are seeking, [redacted]?

[redacted]: No, your Honour. Thank you.

MR McMILLIAN: Nothing further, your Honour.

HIS HONOUR: All right. Thank you.

[redacted]: Might I be excused.

HIS HONOUR: Yes. Thank you.

MR McMILLIAN: And me too, your Honour.
