EDITORIAL NOTE: NO SUPPRESSION APPLIED.

IN THE DISTRICT COURT
AT WELLINGTON

CRI-2015-096-001765
CRI-2015-096-003541
[2016] NZDC 9726

THE QUEEN

v

NAJI NAJIM
MICHAEL HARRIS

Date of Ruling: 26 May 2016

Appearances: K Scott Dowell for the Crown
P Mitchell for the Defendant Najim
M Paish for the Defendant Harris

Judgment: 26 May 2016

RULING OF JUDGE P J BUTLER

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[1] Michael Harris and Naji Najim face an application by the Crown to join matters with which they are charged.

[2] Mr Harris who is represented by Ms Paish faces a charge of wilfully attempting to pervert the course of justice. The essence of which is that he is alleged to have attempted to dissuade a witness by threats from giving evidence in the prosecution of Mr Najim.

[3] Mr Najim who is represented by Mr Mitchell is charged with aggravated robbery, unlawful possession of a firearm, and unlawful possession of ammunition.

[4] The Crown applies pursuant to s 138(1)(a)(ii) to have the charges against both defendant's heard together.

[5] The test is whether a joinder would be conducive to the ends of justice.

[6] The two matters relate to the same complainant. He was a person allegedly robbed and threatened with a firearm on 14 June 2015 and he was also the person allegedly threatened about giving evidence said to have occurred on 21 June 2015.

[7] If the two matters were heard together then this complainant would only have to give evidence once. Despite that there is a suggestion that if the two matters were merged into a single trial it might take slightly longer for that trial to be heard than it would as if the other two matters were heard separately.

[8] On the other hand Mr Najim is not charged as a party or a co-offender with Mr Harris on the charge of attempting to pervert the course of justice. So it may be prejudicial to his interest to have that matter heard at the same time as the charges which he faces.

[9] There may be prejudice too to Mr Harris if the evidence were to establish that there was some connection between the two men.

[10] The Crown refers me helpfully to a Court of Appeal decision in *J v R*. J and another man called S were both charged with raping a complainant. None of the parties knew each other and there was no allegation that J and S had acted in concert. The complainant had been put to bed in a tent in a camping ground in a severely intoxicated state. It was alleged that first S and then J had taken advantage of her in this condition. The issue in the trial of both J and S was consent or a belief in consent on the part of each defendant. The Court of Appeal upheld the ruling of the District Court Judge which was to the effect that both allegations should be heard together because first, issues relating to the complainant's level of intoxication and her ability to give an informed consent would be common to both trials and secondly, DNA evidence would be common to both trials, thirdly an appropriate direction could be made to dispel considerations of prejudice and that would have

been probably based on the fact that the defendants were unknown to each other and unknown to the complainant. I think the facts of *J v R* make it distinguishable from the present case.

[11] Apart from the complainant being common to both allegations the two charges are entirely different from one another. The fact finder may well think that because there was an allegation of attempting to pervert the course of justice then there must have been a prior robbery and vice versa if the evidence established association between the two men.

[12] My view is that the Crown application should be refused. There should be separate trials of the two defendants.

P J Butler
District Court Judge