

***Homs* v The Queen [2020] SASC 242 (8 December 2020) – South Australian Supreme Court**

‘Bail’ – ‘History of domestic and family violence’ – ‘Impact of covid19’ – ‘Special circumstances’ – ‘Strangulation’ – ‘Threat to kill’ – ‘Unlawful imprisonment’ – ‘Victim credibility’ – ‘Weapons’

Charges: 9 charges including aggravated assault, unlawful imprisonment and detention and unlawful choking under s 20A(1) of the Criminal Law Consolidation Act 1935 (SA), most in circumstances of aggravation, that the applicant committed the offence knowing the complainant was a person with whom he was, or was formerly, in a relationship.

Facts: The applicant was in custody from April 2020. The charges relate to incidents of alleged violence towards the male applicant’s female partner in November and December 2019. The November incidents included allegations of threatening and forcing the complainant to take her to a car using a knife and shooting her with a gel pellet gun repeatedly over a 2 hour period.

The December allegations include refusing the complainant permission to leave her apartment while seriously assaulting her, including hitting the complainant in the head twice with the blunt side of a machete, slapping her in the face, threatening her whilst holding the machete, stating that the applicant was “going to gaol today for murder”, putting a blowtorch near the complainant’s face and, later, holding a pillow against her face, restricting the complainant’s breathing, causing her to fear that she might lose consciousness. On the same day, two superficial lacerations were caused to the complainant’s throat with the machete, together with a large defensive laceration to the complainant’s finger. She escaped and contacted police and a blowtorch and machete were recovered from the scene. Police abandoned a chase for safety reasons and the complainant was subsequently found to be resident in Victoria.

The applicant has a history of failure to comply with bail conditions. A prosecutor initially expressed concerns as to the complainant’s credibility and did not oppose bail in the Magistrates Court, seemingly because the complainant visited the applicant in Victoria and has a serious drug dependency. At the time of the instant application these concerns were expressed as matters for trial.

Proceedings: Application for review of denial of bail.

Issues: As a prescribed applicant within the meaning of s 10(2) of the Bail Act 1985 (SA), the applicant must show "special circumstances" within the meaning of s 10A(1) of the Act.

Held: Application allowed:

1.

Special circumstances exist for two reasons:

- (a) While the alleged offending is very serious, the applicant and the complainant are no longer in a relationship and the complainant's whereabouts are not known to the applicant. The prosecution accepts that there are issues regarding the credibility of the complainant.
- (b) The applicant has been in custody in connection with these matters since April 2020. The matter is unlikely to be tried until the first half of 2022, with the delays exacerbated by the recent lockdowns associated with the COVID-19 pandemic.

2. Bail is granted on strict home detention conditions, supported by a guarantee.