

IN THE SUPREME COURT OF THE)
 AUSTRALIAN CAPITAL TERRITORY) No. SCC 407 of 2011
 CRIMINAL JURISDICTION)

THE QUEEN

against

CDA

CASE STATEMENT

CDA ("the accused") is charged with committing an act of indecency upon a person under the age of ten years.

On 13 August 2011 the accused played with the penis of CDE born REDACTED REDACTED 2005 ("the complainant") by touching it and wiggling it, the accused using his hands and fingers to do so.

Outline of the Crown case

The accused is employed by REDACTED as a support worker. The complainant is the youngest child of CDY and CDB. CDY and CDB have two other children: CDC, who suffers Aspergers Syndrome, and CDD, who is autistic and suffers from C7Q11.23 Micro Duplication Syndrome. The accused provides respite care of the children of the CDY family through his employment with REDACTED.

At about 5pm on Sunday 13 August 2011 the accused arrived at REDACTED Ngunnawal in the ACT, the home of the CDY family, to look after the children while CDY and CDB went out. At about 7.30pm, "Charlie and the Chocolate Factory" aired on the WIN television network. The accused, the complainant and CDD watched the movie in the lounge room. The accused lay on the couch with the complainant on top of him and a blanket over both of them.

During the movie, the accused put his hand inside the complainant's underpants and began to touch the complainant's penis. The complainant asked the accused to stop. The accused remained silent, and continued to touch and wiggle the complainant's penis using his hand and fingers. The complainant felt weird and his penis began to hurt a little bit.



CDY and CDB arrived home at about 8pm, 30 minutes earlier than they were due to have returned. CDB walked into the lounge room and saw the accused lying on the couch with the complainant on top of him; both under a blanket. CDB sat on the lounge next to CDD. The complainant took the blanket off him, got off the accused and moved over to sit on CDB's lap. He gave CDB a hug. Soon after the complainant said to CDB:

"I don't feel very good. I don't feel right."

The accused said:

"You're probably exhausted."

The complainant said:

"I'm not exhausted."

The accused said:

"Do you know what I used to say to my brother when he was angry? You're angry, and my brother would say, I'm not angry."

After the accused had left the house, CDB began to get the children ready for bed. After using the toilet, the complainant said to CDB:

"My penis is sore... it's sore because CDA has been touching my penis."

Elements of the offences to be relied upon by the Crown

The elements of the offence are:

1. The accused committed an act of indecency;
2. On a person under the age of ten years old.

The evidence the Crown will rely on to establish the elements of the offence includes the following:

The accused committed an act of indecency

1. The evidence of CDE that the accused played with his penis while he sat on top of the accused, under a blanket during the Charlie and the Chocolate Factory movie.
2. Evidence of CDB that she arrived home to see the complainant sitting on top of the accused under a blanket; that the complainant said to her he *didn't feel right*, and later in the evening the complainant disclosed that his penis felt sore because the accused had been playing with it.
3. The evidence of CDY who was present and heard the complainant say to CDB that his penis was sore because the accused had been playing with it.

4. Evidence of police and their examination of [CDB]'s mobile phone and the text messages sent to her by the accused suggesting she stay out later than scheduled.
5. Evidence of phone company employees and business records as to the accused's phone number and that he sent text messages correlating to the messages received by [CDB].
6. Evidence of Danny Mitrovic that WIN TV screen the film Charlie and the Chocolate Factory the evening of 13 August 2011.

That the complainant was under ten years of age

1. Evidence of [CDB] as to the age of the complainant.

Other evidence

1. Evidence of a search warrant executed by police on 14 August 2011 at the accused's residence at [REDACTED] Mawson. During the search, police seized and took photographs of a number of items including several hand puppets used by the accused when caring for the children and clothing worn by the accused as described by the complainant.
2. The complainant and [CDB] communicated via text message arranging for the accused to care for the [REDACTED] children. Before [CDY] and [CDB] were due to return home, the accused sent a text message to [CDB] suggesting that she stay out for longer.
3. Police obtained records from [REDACTED] to the effect that the accused had been providing respite care to the [REDACTED] family since January 2011.