

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: *BS 9030/04.*

JULIE THERESE GILBERT

AND

SCOTT ALEXANDER VOLKERS

Respondent:

AFFIDAVIT

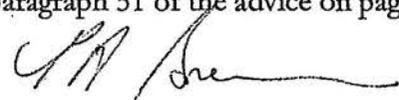
SUPREME COURT
OF QUEENSLAND

14 NOV 2004 I, Patricia Anne Brennan (REDACTED) in the State of New South
Wales, Medical Director, make oath and states as follows:

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BRISBANE

1. I am the Medical Director of the Liverpool/Fairfield/Bankstown/McArthur Sexual Assault Service.
2. Annexed hereto and marked with the letters "PAB1" is my resume outlining my qualifications and details of training in the area of sexual abuse and assault and my medical and clinical experience.
3. I have read a copy of a transcript of interview between Leanne Clare (Director of Public Prosecutions (Qld)), Darren Brazier, Julie Gilbert, Shayne Gilbert, Hetty Johnson and Simon Tolhurst which took place on 11 May 2004. Annexed hereto and marked with the letters "PAB2" is a copy of that transcript.
4. I have also read a copy of the advice of New South Wales Deputy Senior Crown Prosecutor Ms Margaret Cunneen dated 26 March 2004. Ms Cunneen's advice is directed to the Director of Public Prosecutions (Qld) and provides opinions as to why the DPP (Qld) should discontinue the prosecution against Scott Volkens. Annexed hereto and marked with the letters "PAB3" is a true copy of that advice.
5. I have read an article "Sexual arousal and orgasm in subjects who experienced forced or non consensual sexual stimulation- a review" by Roy J Levin and Willy van Berlo published in the Journal of Clinical Forensic Medicine volume 11 (2004) pages 82 – 88. annexed hereto and marked with the letters "PAB4" is a true copy of that article.
6. I am of the opinion that the inference that Julie Gilbert's credibility was considered doubtful by the New South Wales DPP was misinformed medically. I have singled out four comments from that advice. I hereby list the four comments and provide my own criticisms of those comments.
7. At paragraph 51 of the advice on page 11 Ms Cunneen states: -

Deponent



Solicitor/Justice of the Peace/
Commissioner for Declarations

COPY



AFFIDAVIT
Filed on behalf of the Applicant

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"The trouble with Gilbert's allegation three is the likelihood that a 13 year old girl would have experienced an orgasm while being indecently assaulted"

8. It is a feature of child and adolescent sexual abuse (as well as of the rape of an adult) that erotic stimulation, albeit legally abuse, can involve pleasurable sensations in the midst of threat and distress. This can involve full orgasm since the process is one that operates at a reflex level, once a certain level of stimulation is reached. It is a source of guilt and anxiety that victims can and do experience sexual pleasure in a context that is often far from pleasant. In the case of children and in Julie's case there was no direct threat. The context was a pleasurable massage that was allegedly turned to erotic advantage by the offender. Levin and Van Berlo in an article in the Jnl of Forensic Science (2004) "*Sexual Arousal and Orgasm in subjects who experience forced or non consensual sex*" conclude that the experience of arousal to orgasm is not uncommon during sexual abuse and in no way indicates consensual sex.

9. Further in paragraph 51 on page 11 Ms Cunneen states: -

"Firstly one must envision that there would be sufficient manual leverage for Volkens to manipulate the clitoris of a girl who had never before had an orgasm while she was wearing two pairs of tight nylon swimming costumes and a pair of shorts".

10. There is an implication that the clitoris itself has to be manipulated directly in order to produce arousal. This shows a degree of ignorance about the nature of female anatomy and arousal which is of concern. Indeed the talk of manual leverage is misleading. The clitoris can be stimulated by indirect movement of tissues surrounding it or even distant to it, given the wide network of nerves connected to it. Swimming costumes are not necessarily tight and even so this would not preclude contact, pressure or indirect stimulation.

11. Further in paragraph 51 on page 11 Ms Cunneen states: -

Indeed, she says in the paragraph in which she makes the allegation in her statements of 30 April 2002: "I remember feeling scared". This, it is submitted, is completely inconsistent with the mental capacity required for a female to achieve orgasm particularly for the first time".

11. This statement would appear to be ignorant of sexual physiology, since a wide variety of different experiences mark the onset of sexual feeling in puberty and the relationship of conscious thought to what is reflexive, not calculated. The notion that a given mental capacity is a prerequisite for orgasm is well outside common experience and medical knowledge. The contrast drawn with adolescent males who experience orgasm involuntarily betrays medical ignorance about female sexuality. Kinsey published details of sexual experience in young females as early as 1953, and claimed that sexual responses in both sexes operate at a reflex physiological level while profoundly influenced by the higher centres. Kinsey also emphasised the vast variety of human sexual experiences.

12. In paragraph 58 Ms Cunneen states: -

"It is legitimate to consider whether 12 year old swimmers have breasts but that is the allegation".

13. This was said in response to the allegation that Volkens massaged the side of AEI [redacted] breasts. A 12-year-old girl can certainly have breasts even if there is minimal glandular breast tissue present. Sexual abusers commonly fondle and stimulate children's breasts and/or nipples, simulating adult sex.

SWORN by Patricia Anne Brennan

on 31st October, 2004 at Brisbane in the presence of:



Deponent

Solicitor/Justice of the Peace/
Commissioner for Declarations